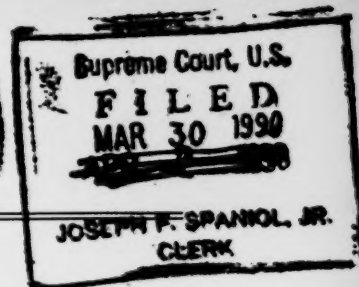


89-1538

No. \_\_\_\_\_



In The  
Supreme Court of the United States

October Term, 1989

RANDALL HANK WILLIAMS,

*Petitioner,*

vs.

CATHERINE YVONNE STONE,

*Respondent.*

On Petition For Writ Of Certiorari  
To The Supreme Court Of Alabama

PETITION FOR WRIT OF CERTIORARI

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## I. QUESTIONS PRESENTED

### A. Retroactivity Issues

1. WHETHER MODERN EQUAL PROTECTION DOCTRINE REGARDING THE INTESTACY RIGHTS OF OUT-OF-WEDLOCK CHILDREN IS TO BE APPLIED RETROACTIVELY TO ESTATES THAT, UNLIKE THE OPEN ESTATE CONSIDERED IN *REED V. CAMPBELL*, HAVE BEEN CLOSED BY JUDICIAL DECREE FOR A PERIOD OF TEN YEARS.

2. ASSUMING FULL RETROACTIVITY OF MODERN EQUAL PROTECTION DOCTRINE REGARDING THE INTESTACY RIGHTS OF OUT-OF-WEDLOCK CHILDREN, WHETHER ALABAMA'S INTESTACY LAWS IN EFFECT AT THE TIME OF DECEDENT'S DEATH IN 1953 AND PRIOR TO THE CLOSING OF DECEDENT'S ESTATE IN 1975 VIOLATED THE EQUAL PROTECTION CLAUSE - I.E., WHETHER *TRIMBLE V. GORDON* OR *LALLI V. LALLI* PROVIDES THE APPROPRIATE PRECEDENT.

3. WHETHER, CONSISTENT WITH THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS AND IN APPARENT CONFLICT WITH FOOTNOTE 8 OF *REED V. CAMPBELL*, ALABAMA CAN RETROACTIVELY APPLY 1982 LEGISLATION REGARDING INTESTACY TO A DEATH THAT OCCURRED IN 1953 SO AS TO UNDO AND TERMINATE RIGHTS OF INHERITANCE THAT VESTED PURSUANT TO BINDING COURT ORDERS ENTERED IN 1967-68 IN PROCEEDINGS TO WHICH PETITIONER AND RESPONDENT (THROUGH A GUARDIAN AD LITEM)

## I. QUESTIONS PRESENTED – Continued

WERE BOTH PARTIES AND REPRESENTED BY COUNSEL.

### B. Due Process Issues

#### 1. *Jurisdictional Issues*

a. WHETHER IT IS A VIOLATION OF DUE PROCESS FOR THE ALABAMA SUPREME COURT, IN AN APPEAL TO WHICH PETITIONER WAS NOT A PARTY OR PRIVY, TO ORDER PETITIONER TO RELINQUISH A PORTION OF AN ESTATE THAT HAD BEEN VESTED IN HIM BY THREE PREVIOUS, FINAL ALABAMA COURT DECREES.

b. WHETHER, IN THE ABSENCE OF PERSONAL JURISDICTION OVER AN AFFECTED PARTY (PETITIONER) BECAUSE NO APPEAL WAS TAKEN TO THE ALABAMA SUPREME COURT FROM A TRIAL COURT JUDGMENT TO WHICH PETITIONER WAS A PARTY, THE ALABAMA SUPREME COURT CAN, DESPITE THIS COURT'S DECISIONS IN *HANSON V. DENCKLA* AND *SHAFFER V. HEITNER*, ASSERT *IN REM* JURISDICTION AS A VEHICLE FOR EVADING THE CONSTITUTIONAL CONSTRAINTS IMPOSED ON COURTS FOR THE EXERCISE OF PERSONAL JURISDICTION.

#### 2. *Substantive Due Process/Takings Issues*

a. WHETHER, EVEN IF ERRONEOUSLY ADJUDICATED, THE UNAPPEALED FINAL JUDGMENTS ENTERED ON BEHALF OF PETITIONER, IN LITIGATION IN WHICH RESPONDENT WAS A PARTY AND WAS

## I. QUESTIONS PRESENTED – Continued

REPRESENTED (BY A GUARDIAN AD LITEM IN 1967-68), CONFER "PROPERTY" RIGHTS PROTECTED BY THE FIFTH AND FOURTEENTH AMENDMENTS.

b. WHETHER, IF A "PROPERTY" INTEREST EXISTS, THE DECISION OF THE ALABAMA SUPREME COURT CONSTITUTES A TAKING OF PETITIONER'S PROPERTY IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS.

c. WHETHER THE GENERAL PRINCIPLE THAT A JUDGMENT WILL NOT BE ALTERED ON APPEAL IN FAVOR OF A PARTY WHO DID NOT APPEAL, ENFORCED ROUTINELY IN FEDERAL LITIGATION IN SUCH DECISIONS OF THIS COURT AS *UNITED STATES V. STANLEY* AND *FEDERATED DEPARTMENT STORES, INC. V. MOITIE*, IS OF CONSTITUTIONAL DIMENSION SO THAT, WHEN ITS DISREGARD HAS THE CONSEQUENCE OF UNDOING OR DIVESTING SETTLED EXPECTATIONS ARISING FROM CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS, A VIOLATION OF DUE PROCESS ENSUES.

### 3. *Procedural Due Process Issues*

a. WHETHER PETITIONER'S LACK OF NOTICE AND OPPORTUNITY TO BE HEARD IN THE PROCEEDING BEFORE THE ALABAMA SUPREME COURT, WHICH PURPORTED TO FINALLY ADJUDICATE RIGHTS OF PETITIONER ADVERSE TO HIS INTERESTS, VIOLATES DUE PROCESS UNDER THIS COURT'S DECISIONS IN SUCH CASES AS *MULLANE V. CENTRAL*

**I. QUESTIONS PRESENTED – Continued**

*HANOVER BANK & TRUST CO. AND TULSA PROFESSIONAL COLLECTION SERVICES, INC. V. POPE.*

b. WHETHER THE FAILURE OF THE ALABAMA SUPREME COURT TO PROVIDE A FORUM IN WHICH PETITIONER COULD ADJUDICATE HIS CLAIMS AND BE HEARD ON THE MERITS CONSTITUTED A DEPRIVATION OF PETITIONER'S PROPERTY INTERESTS IN VIOLATION OF DUE PROCESS UNDER THIS COURT'S DECISIONS IN SUCH CASES AS *FUENTES V. SHEVIN* AND *BRINKERHOFF-FARIS TRUST & SAVINGS CO. V. HILL*.

## PARTIES TO THE PROCEEDING

The parties to this proceeding are Randall Hank Williams ("Petitioner"), one of the plaintiffs in the original action below and the Counter-Defendant in the counter-claim submitted in connection therewith, and Catherine Yvonne Stone ("Respondent"), the defendant in the original action below, and the counter-claimant in the counter-claim and the third party plaintiff in the third party action submitted in connection therewith. The remaining parties to the proceedings below were original plaintiffs Welsey H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., both Tennessee corporations, and third party defendants Gulf American Fire & Casualty Company, American States Insurance Company, Jones, Murray & Stewart, P.C., and Irene Smith. An additional third party defendant, the Estate of Robert B. Stewart, was voluntarily dismissed by Respondent. Petitioner does not believe that any of these parties below have any interest in the outcome of this Petition.

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In The  
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RANDALL HANK WILLIAMS,  
*Petitioner,*  
vs.

CATHERINE YVONNE STONE,  
*Respondent.*

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**On Petition For Writ Of Certiorari  
To The Supreme Court Of Alabama**

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner respectfully petitions this Court to issue a writ of certiorari to review the judgments and decisions of the Supreme Court of Alabama released on July 5, 1989 and November 9, 1989 in the matter of *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty, et al.*, No. 87-269.

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**IV. OPINIONS BELOW**

The decisions of the Alabama Supreme Court in *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co., et al.*, are reported at 554 So.2d 346 (Ala. 1989) and are reproduced in Appendices A-1 and C-1. (The Appendix shall hereinafter be cited as App.) The unreported orders of the

Circuit Court of Montgomery County, Alabama are reproduced in App. B-1 and B-2.

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## V. JURISDICTION

The original judgment of the Supreme Court of Alabama in *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co., et al.* was entered on July 5, 1989. The judgment "On Application for Rehearing" was entered on November 9, 1989. By order, dated January 25, 1990, this Court granted an extension of time within which to file this Petition for Writ of Certiorari unto and including March 30, 1990. Jurisdiction to review the judgments of the Supreme Court of Alabama by writ of certiorari is conferred upon this Court by 28 U.S.C. § 1257(a) and by common law writ of certiorari pursuant to 28 U.S.C. § 1651(a).<sup>1</sup>

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## VI. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This action involves *U.S. Const.*, amend V, and *U.S. Const.*, amend XIV, § 1, copies of which are reproduced in

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<sup>1</sup> In the event this Court finds that the Petitioner's status as a non-party to the appeal before the Alabama Supreme Court prevents consideration of this case under statutory certiorari, the Petitioner urges this Court to issue a common law writ of certiorari pursuant to 28 U.S.C. § 1651(a). Since the trial court's dismissal of the third party action was affirmed on appeal, it is unlikely that either the third party defendants or Respondent would seek certiorari. The existence of a federal question, substantial injustice and the fact that Petitioner is unable to find relief in any other court, provide the circumstances necessary for the common law writ. The Alabama Supreme Court has usurped its power in this proceeding. This is precisely the situation which the common law writ of certiorari is designed to address. *DeBeers Mines v. United States*, 325 U.S. 212, 217 (1945).

App. D-1. It also involves the retroactive application and/or interpretation of Ala. Code §§ 26-11-1, 26-11-2, 26-17-6 and 43-8-48 (1975), copies of which are also reproduced in App. D-1.

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## VII. STATEMENT OF THE CASE

### A. Preliminary Statement

In her dissent below, Alabama Supreme Court Justice Janie L. Shores decried what she termed the majority's "disregard of the law" in this case. (App. at A-1.56). Justice Shores aptly observed that "every rule of law extant at every critical time" was "against [Respondent's] position." Justice Shores felt constrained not to "overlook" the law, concluding that, in its rush to do what it perceived as the "right thing," the Alabama Supreme Court (by a 4-2 vote, with three recusals on the rehearing) reached its bizarre result "in a disregard for all law." (App. at C-1.16).

Petitioner asks this Court to consider what constraints constitutional principles impose on a state supreme court's practice of "Feel-Good" jurisprudence.

Just how has the Alabama Supreme Court placed itself above the law? It has rendered final judgment to Petitioner's prejudice in a proceeding to which he was not a party. Then, when confronted with the embarrassingly inconvenient strictures of due process, the court, much like the skillful illusionist, pulled a doctrinal rabbit out of its hat - it concluded that its unjudicious conduct, at odds with core due process principles, could be salvaged by incantation of the Latin term "*in rem*." A more descriptive Latin term would be use of a doctrinal *deus ex machina*.

No matter how frequently or sanctimoniously chanted, "*in rem*" is surely no mantra that a court can intone to circumvent the customary due process requirements of notice and opportunity to be heard before one's

long-vested property rights are unceremoniously stripped away. The label "in rem" cannot legitimize the fundamental violations of core due process values that are so painfully and palpably present in this proceeding.

Further, in its scythe-like attack on what it apparently considered to be the underbrush of settled law and judicially-vested expectations, the Alabama Supreme Court wantonly undid and ignored judgments long-since final, two of more than twenty years' standing. Without briefing (by any party) on the issues (App. G-2, G-3, G-4, G-5, and G-6), it erroneously applied *Trimble v. Gordon*, 430 U.S. 762 (1977), retroactively to an estate that had been closed, with judicial approval, since 1975 (and to an intestate death that occurred in 1953). And, it applied legislation enacted years after the closing of the estate retroactively so as to upset years of settled expectations without so much as providing Petitioner, whose rights were abrogated by all this creative judicial ad hocery, with an opportunity to present his case in court.

This is not law, it is (to follow the Alabama Supreme Court's lead to the Latin) judicial *ipse dixit* – wishful thinking masquerading as law. Despite the understandable attempt to confine this precedent to what are described as the "unique facts" of this case, principles established in one case can have a perverse application in others. The troublesome principles of retroactivity and constitutional law cannot be easily cabined. On the contrary, the decision in this case will likely be as far-reaching as it is far-fetched. Constitutional cancers, like their biological counterparts, have a way of spreading in all sorts of destructive ways – some foreseeable and some not. This Court must step in to hear and rule on the critical constitutional issues raised by this important matter. This case, furthermore, provides an excellent vehicle for rationalizing the law of retroactivity in this area, much as has been done in the criminal area.

## B. Statement of Material Facts

On January 1, 1953, country music legend Hiram "Hank" Williams ("Hank Sr.") died intestate. (App. at H-1.1). By agreement dated October 15, 1952, Hank Sr. agreed to support the as-yet-unborn child of Bobbie W. Jett. (App. at A-1.6). While acknowledging the possibility of paternity, Hank Sr. expressly included a nonadmission of paternity in the 1952 Agreement. (App. at A-1.7). In 1952, Alabama law would have permitted Hank Sr. to legitimate the unborn child and allow her to inherit from him by declaring in writing that he recognized the child as his own. (App. at A-1.41). He did not do so. (App. at A-1.17).

Respondent, Ms. Jett's out-of-wedlock child, was subsequently adopted by Hank Sr.'s mother. (App. at A-1.14 and A-1.15). After the death of her first adoptive mother, Respondent was adopted by Mr. and Mrs. George Wayne Deupree, an upper-middle class family from Mobile, Alabama. (App. at B-1.7). Petitioner Randall Hank Williams, Jr. ("Hank Jr."), Hank Sr.'s son by his first wife Audrey Williams, was three years old at the time of his father's death.

In 1967 the right to inherit from Hank Sr. became the subject of judicial proceedings in Alabama. Respondent was vigorously represented in the matter by a court-appointed guardian ad litem. (App. H-5). The Court was advised of the existence of Respondent (App. at H-4.1) and, after a full hearing, held that Hank Jr. was "the sole heir of his father . . . and is the only beneficiary of his estate . . ." (App. at H-6.3). The court noted that there had not been "sufficient compliance with the requirements" for legitimation under Alabama law to "give . . . any right of inheritance" to Respondent. (App. at H-6.2). The court found that "the child in question" had no legal right to "receive any part of [Hank Sr.'s] estate." (App. at H-6.2).

At the insistence of the Deuprees, Respondent's adoptive parents (App. H-7), the trial judge denied the



guardian ad litem's request for leave to appeal.<sup>2</sup> (App. H-8 and H-9). The December 1, 1967 decision therefore became final under Alabama law.

On January 30, 1968, in a matter involving the guardianship estate of Hank Jr., the same court held that Respondent did not "have any right in the copyrights or renewals of those rights of the late [Hank] Williams." (App. at I-5.3). The court noted that Respondent had been adopted ten years previously (by the Deuprees), and that the adoptive parents "were fully informed" of the proceedings and "chose not to pursue any action in regard to [the guardianship] proceedings." (App. at I-5.4). Despite the vigorous arguments presented by the same guardian ad litem on her behalf (App. I-4), the court ruled that Respondent was "not an heir of the late [Hank] Williams within the meaning of the Copyright Law." (App. at I-5.5).

Again at the insistence of the Deuprees (App. H-7), no appeal was taken. The January 30, 1968 decree became final under Alabama law.

From and after 1968, periodic distributions of the assets of Hank Sr.'s estate were made to Hank Jr. and approved by the Alabama Circuit Court. With respect to one such distribution in 1972 (App. H-10), that court reiterated its awareness of Respondent's existence and reaffirmed its 1967-68 decisions that Hank Jr. was the sole heir of his father. (App. at H-11.2). The court declared its prior rulings consistent with the intervening decision in *Labine v. Vincent*, 401 U.S. 532 (1971), (upholding an intestate succession provision that subordinated rights of acknowledged out-of-wedlock children to those of other relatives of the parent). (App. at H-11.1 and H-11.2).

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<sup>2</sup> Alabama law, to avoid the wasting of estates, provided that a guardian ad litem could be held liable for additional costs for prosecuting an unsuccessful appeal without prior leave of court. (App. at A-1.34).



In August 1975, Hank Sr.'s estate was closed by order of the court. (App. H-14). All remaining assets were distributed to the sole heir, Hank Jr. (App. H-13), and the administrator was discharged. (App. H-14).

In January 1974, upon reaching the age of 21, Respondent received money from the estate of Hank Sr.'s mother (her first adoptive mother). In connection therewith, Respondent was informed by Mrs. Deupree that she might be the out-of-wedlock child of Hank Sr. (App. at B-1.14). As a result thereof, Respondent read various publications about her alleged natural father that discussed an out-of-wedlock child and the 1967-68 proceedings (App. at J-1.7 and J-1.8), but she did not pursue any legal claims related to her possible relationship to Hank Sr., even stating in 1979 that she did not want anyone to associate her with her alleged father.<sup>3</sup> By 1985, when Respondent, at age 32, made her first claim to Hank Sr.'s estate, it had been closed for ten years.<sup>4</sup>

### C. Statement of the Proceedings

On September 10, 1985, Hank Jr. and representatives of the assignees of certain of his rights filed an action in Alabama to clarify the legal status of Respondent's asserted rights of inheritance from Hank Sr. (App. F-1). On October 14, 1986, Respondent counterclaimed against Hank Jr. to establish her status as an heir to Hank Sr.'s long-since-closed estate. (App. F-2). On the same day,

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<sup>3</sup> Respondent's motive for dissociating herself from Hank Sr. is unexplained. (App. at J-1.14 and J-1.15). However, in the privileged social circles in which she moved, Hank Sr. was undoubtedly deemed a low-brow hillbilly.

<sup>4</sup> In the related copyright case, the District Court observed that "a cynic might suggest that [Respondent] slumbered peacefully, and knowingly, on her rights until she was awakened by the attractive sound of a ringing cash register." (App. at J-1.13).

Respondent filed a third party complaint against the former administrators of the estate and their attorneys and sureties, alleging fraud and seeking indemnification. (App. F-3).

On July 14, 1987, the trial court granted summary judgment (App. F-4 and F-5) to Hank Jr., et al., holding that he was the sole heir to the estate. (App. B-1). The court simultaneously ruled against Respondent on her counterclaim (on the same issue).<sup>5</sup> The court further held that Respondent could not inherit from Hank Sr. "irrespective of whether the Court applies existing law or the law of 1952." (App. at B-1.18).

The trial court conceded that a determination of paternity would not affect the outcome but concluded that Respondent was the biological daughter of Hank Sr. (App. at B-1.20 and B-2.3). As all parties had achieved a desired result which they did not want to risk, no appeal was taken by any party from the final judgments (a) that Respondent was not a legal heir of Hank Sr. and that Hank Jr. was the only legal heir, and (b) that Respondent was, without legal consequence, the biological daughter of Hank Sr. Those judgments therefore became final under Alabama law.

In granting summary judgment to the third party defendants, the court held that Respondent's allegations of fraudulent concealment were irrelevant since any further disclosure with respect to Respondent would have been legally "superfluous." (App. at B-1.19). *See* note 9, *infra*.

Respondent elected only to appeal from the decision against her in the third party indemnification action. (App. G-1). Only that third party action was before the

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<sup>5</sup> The court found that the claim by Respondent "that she is an heir and entitled to inherit was decided in the 1967 proceeding in which the parties were the same." Accordingly, Respondent was found to be "barred from relitigating that identical issue and claim in this case." (App. at B-1.18).

Alabama Supreme Court in this case. Hank Jr. was not a party to the appeal and not involved at all in that appellate proceeding.

With disregard for the finality of the unappealed 1987 Circuit Court decision, the Alabama Supreme Court found Respondent to be a legal heir of Hank Sr. and awarded her a proportionate share of Hank Sr.'s estate from and after August 5, 1985. (App. at A-1.49, A-1.53 and A-1.55). That judgment was (a) in a proceeding that reversed an unappealed determination that Respondent was not a legal heir; (b) in conflict with the final determinations in 1967-68 that Respondent was not a legal heir of Hank Sr.; and (c) in an appellate proceeding in which Hank Jr. was not a party or involved in any way, even though the appeal finally and adversely adjudicated his interests (which were not the subject of such proceedings or otherwise before the court), thereby stripping him of rights vested at least as early as 1967-68.

The Alabama Supreme Court created a retroactive duty to disclose the existence of Respondent even though she had no legal rights or relationship to Hank Sr. or his estate during the period 1953-1967.<sup>6</sup> After creating it, the court held the third party defendants to have fraudulently breached the duty of disclosure. But the showing of fraud, by itself, would prove nothing if there were no legal consequences. Fraud is only significant if it causes some injury. The injury, according to the Alabama Supreme Court, was that the courts in 1968 were denied the opportunity to create new law which would have allowed Respondent to inherit from Hank Sr.

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<sup>6</sup> Of course, such disclosure had in fact been made as reflected in the active advocacy of the guardian ad litem in the 1967-68 proceedings. (App. H-5, H-8 and I-4). The decision on whether to approve an appeal was in fact made with full knowledge of the existence of Respondent. (App. H-9). In any event, the alleged duty was not on Hank Jr. but on the third-party defendants.

The Alabama Supreme Court used its fraud theory to vacate the 20-year-old decrees, but then had to determine what law to apply. It concluded that it would not apply the law existent at the time of the 1967-68 proceedings. Had that happened, Respondent would have obtained no relief. Instead, the court applied *Trimble* retroactively to conclude that the 1967-68 Alabama law was unconstitutional. It then determined that the law as of 1989 should be applied retroactively to the 1967-68 proceedings, thereby allowing Respondent to inherit. (App. at A-1.51).

It was under this "theoretical" model that Hank Jr. was deprived of property in a proceeding to which he was not a party and in which he was not given an opportunity to be heard.<sup>7</sup>

Deprived of property in an action to which he was not a party, Hank Jr. was without any recognized procedure to seek an opportunity to be heard. Even so, he filed a petition with the Alabama Supreme Court for leave to appear ("Petition for Leave"). (App. G-7). That petition raised numerous issues, including due process violations. The Petition for Leave was Hank Jr.'s first opportunity to raise these federal questions.

While admitting that Respondent did not appeal the judgments to which Hank Jr. was a party, in its second opinion the Alabama Supreme Court dismissed Hank Jr.'s due process arguments by holding, for the first time, that

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<sup>7</sup> One cannot help but note the irony of the proceeding below. The Alabama Supreme Court vacated twenty-year-old decisions based upon the alleged fraudulent conduct of the third party defendants. It then affirmed a dismissal of the third party fraud claims against those same third party defendants who were the actual perpetrators of the alleged fraud. (App. at A-1.56 and C-1.14). Thus, the actual parties to the third-party appeal were exonerated from legal responsibility, but their conduct caused the Alabama Supreme Court to upset prior final decrees to the disadvantage of Hank Jr., a non-party to the appeal.

the third party action was *in rem* (App. at C-1.8) (even though the property against which relief was sought was in no way before the court), and, more explicitly than in its original opinion, that *Trimble v. Gordon* should be applied retroactively. (App. at C-1.13).

#### **D. Statement of Related Proceedings**

Hank Jr., along with others, is submitting a Petition for Writ of Certiorari for consideration by this Court with respect to a related proceeding in the Second Circuit. (For a brief statement explaining those proceedings, see App. J-6). The decisions of the Second Circuit and the Alabama Supreme Court are inextricably linked. As will be shown in the Second Circuit petition, the Alabama Supreme Court's decision in this case has tainted the Second Circuit's decision and the federal judicial system by causing the Second Circuit to disregard its own standards of review and engage in conduct outside of the usual course of judicial proceedings. The interrelated issues raised by both sets of opinions should be considered jointly by this Court.

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### **VIII. REASONS FOR GRANTING THE WRIT**

#### **A. Retroactivity Issues**

The central premise of the decision below was that *Trimble v. Gordon*, 430 U.S. 762 (1977),<sup>8</sup> should be applied retroactively to an estate that had been closed by final order for nearly ten years before commencement of the action. The Alabama Supreme Court found that the administrators of the estate had committed "legal fraud" by remaining silent about "material facts" regarding the Respondent. Because Alabama law in effect at all relevant

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<sup>8</sup> *Trimble* held invalid an Illinois law that barred inheritance by an out-of-wedlock child from an intestate father unless the parents married.

times barred Respondent from inheriting, any such facts could have been material only if *Trimble* were applied retroactively.<sup>9</sup>

Upon upsetting the 1967 and 1968 judgments, the Alabama Supreme Court expressly declined to apply the Alabama law of intestacy as it existed in 1968. The reason was that "the law as it existed at that time has since been found to be unconstitutional by the United States Supreme Court in *Trimble v. Gordon*. . . ." (App. at A-1.51). Instead, the court applied laws enacted in 1982 and 1984 retroactively to Hank Sr.'s death in 1953 and to the 1967 and 1968 proceedings, even though the estate was closed, with judicial approval, in 1975.

Petitioner urges this Court to accept *certiorari* to clarify the controlling principles of retroactivity left unresolved by *Reed v. Campbell*, 476 U.S. 852 (1986).

### 1. Retroactivity in Civil Cases

*Chevron Oil Company v. Huson*, 404 U.S. 97 (1971), sets forth the general tests for determining retroactivity in a civil action. This Court has never determined whether, under *Chevron*, the rules of *Trimble*, *Lalli v. Lalli*, 439 U.S. 259 (1978),<sup>10</sup> and related cases should be applied retroactively.

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<sup>9</sup> The finding of fraud is legally insufficient, standing alone, to upset a final judgment. The alleged fraud must be the legal cause of injury to a party. The only relevance of the finding of fraud is if the allegedly withheld facts could have had some legal consequence. And the only way in which there could have been some legal consequence is if the governing law of intestacy at the time of the proceedings (1967-68) was unconstitutional. That, in turn, could only be the case if *Trimble v. Gordon* were applied retroactively.

<sup>10</sup> *Lalli* upheld a New York law forbidding out-of-wedlock children to inherit from their intestate fathers, even though there was convincing proof of paternity, unless there was a judicial finding of paternity during the father's lifetime.



*Reed v. Campbell*, 476 U.S. 852 (1986), with facts substantially identical to *Trimble* (see note 8, *supra*), was briefed and argued largely on the basis of *Chevron* retroactivity, but that issue was not resolved by the Court. *Reed* involved a direct appeal and an open estate. Therefore, important state interests associated with estates and inheritance were not threatened. Under the circumstances, the Texas law, which totally barred an out-of-wedlock child from inheriting from her intestate father in the absence of the marriage of her parents, was found invalid under *Trimble*.

Nevertheless, *Reed* recognized the important state "interest in orderly disposition of decedents' estates," the need for appropriate "limitations on the time and manner in which claims may be asserted," and the equally important interest in finality after distribution of assets of an estate, all of which would be undermined by wanton retroactivity. *Id.* at 865. In the open estate in *Reed*, however, those state interests were not implicated.

This case involves a closed estate, the assets of which have been distributed and have subsequently been transferred. It involves a collateral attack long after final orders established the respective rights of the parties. The case squarely poses the retroactivity question reserved in *Reed* and thus provides an appropriate and overdue opportunity for this Court to resolve the important issue that *Reed* left open.

#### **a. The Law on Retroactivity in the Lower Courts Is Unclear**

*Chevron* has not provided adequate guidance for the lower courts. Cases from numerous jurisdictions illustrate the importance of the issue and demonstrate the murkiness that prevails regarding retroactive application of *Trimble* and *Lalli* to closed estates. Those cases were definitively catalogued in the Jurisdictional Statement in *Reed* and influenced this Court to hear that case. The murkiness still prevails, as is reflected by the cases

briefed in the Appendix. (App. K-1). The bottom line is that the majority of jurisdictions do not accept the retroactivity approach of Alabama, but the confused state of the law cries out for this Court's articulation of a bright-line rule. Compare *Griffith v. Kentucky*, 479 U.S. 314 (1987) with *Teague v. Lane*, 109 S.Ct. 1060, *reh'g denied*, 109 S. Ct. 1771 (1989).

**b. *Trimble* and *Lalli* Should Not Be Applied In a Collateral Attack**

Every case decided by this Court involving the inheritance rights of an out-of-wedlock child has arisen on direct review and involved estates that had not been closed by final probate order. This case thus provides this Court with its first clear opportunity to address the retroactivity issue in a collateral attack and also to unify principles of retroactivity in the civil area. By analogy to the criminal cases, new constitutional rules, announced after an estate is closed, should not be applied to re-open the estate in a subsequent collateral attack.

*Teague v. Lane*, 109 S.Ct. 1060 (1989), held new rules generally not applicable to criminal cases on collateral review.<sup>11</sup> If the intervening decision was not dictated by precedent existing at the time the conviction became final, it is a "new" rule. See *Butler v. McKellar*, 58 U.S.L.W. 4294 (U.S. March 5, 1990) (No. 88-6677). *Trimble*, which cast doubt on the vitality of *Labine*, undoubtedly announced a "new rule" regarding the inheritance rights of illegitimates. 430 U.S. at 776, n. 17.

*Teague's* rationale applies to civil cases. *Teague* relied on cases upholding nonretroactivity in civil law. 109 S.Ct. at 1074. In comparing the civil and criminal contexts, *Teague* noted:

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<sup>11</sup> *Teague* was expressly adopted by a majority in *Penry v. Lynaugh*, 109 S.Ct. 2934 (1989).



The fact that life and liberty are at stake in criminal prosecutions "shows only that 'conventional notions of finality' should not have as *much* place in criminal as in civil litigation, not that they should have *none*."

*Id.* (emphasis in original). *Reed* voiced the same concern for finality. Because finality of judgments has even more place in civil than in criminal litigation, especially in the field of estates and inheritance, *Teague* should be extended at least to this context.<sup>12</sup>

The three-pronged criminal law retroactivity test of *Linkletter v. Walker*, 381 U.S. 618 (1965), rejected as unworkable in *Teague*, closely parallels the three-pronged *Chevron* test of retroactivity for civil cases. *Chevron* has provided little guidance in illegitimacy inheritance cases. (App. K-1). Drawing a distinction between direct appeals and collateral attacks would avoid further confusion and inconsistency in the lower courts by providing a fair and workable bright-line rule.

This case is an appropriate one for applying such a test. Hank Jr.'s rights were determined by final judicial order in 1967. When the estate was closed in 1975, *Labine* (a 1971 case) was still the controlling precedent. Hank Jr. relied for years on the validity of the probate orders, as did subsequent transferees of the copyrights and renewal rights in Hank Sr.'s songs. If the decision below is allowed to stand, no distribution of assets pursuant to an order of probate is safe against a collateral attack based upon intervening changes in the law. Application of a *Teague*-type test would prevent uncertainty, and protect vested rights and final judgments, without substantial

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<sup>12</sup> Cf. *Bradley v. School Board*, 416 U.S. 696, 710-711 (1974) (recognizing distinction in civil retroactivity between a "change in the law that takes place while a case is on direct review . . . and its effect on a final judgment under collateral attack. . . .").

hardship. See *Clark v. Jeter*, 486 U.S. 456 (1988) (invalidating six-year statute of limitations for action by out-of-wedlock child).

**c. *Lalli* And Not *Trimble* Should Have Controlled the Result**

One irony of this case is that, by applying *Trimble* rather than *Lalli*, the Alabama court chose the wrong precedent to apply retroactively. At all relevant times, Alabama recognized two alternative methods of legitimation, marriage or written declaration of paternity. In 1979, the statute was construed to permit a third method, adjudication of paternity during the father's lifetime.<sup>13</sup> As construed, the Alabama statute was identical to that of New York, which this Court upheld in *Lalli*. Had *Lalli* controlled, Respondent's claim would have failed.

The fine line that this Court has drawn in the area – between *Lalli* and *Trimble* – and the important state interests at stake make unwarranted the retroactive application of these cases to estates that have been administered and closed with court approval. This case presents an excellent vehicle for restoring clarity and finality to this important area of the law.

**2. Retroactive Application of New Law Violated Due Process**

The Texas court in *Reed* determined that the out-of-wedlock child was not entitled to share in her putative father's estate under the Texas Family Code, which had been enacted after the father's death. This Court observed that applying the Family Code to deny the child's pre-existing right to inherit would "raise serious due process questions." *Reed v. Campbell*, 476 U.S. at 856, n. 8. It is implicit in footnote 8 that inheritance rights cannot

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<sup>13</sup> *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980).

be denied based upon procedures or substantive criteria established after they can no longer effectively be utilized.<sup>14</sup> Due process requires a meaningful opportunity to assert one's rights, or contest those asserted by another, and that right is denied where a claimant is held to standards enacted after the time has passed when the claimant could no longer comply with those standards.<sup>15</sup>

While this case presents the reverse of the situation addressed in footnote 8 of *Reed*, the same due process concerns are implicated. Here, legislation enacted in 1982 and 1984 was applied to an estate closed in 1975. The lapse of time impeded Petitioner's ability to litigate paternity, which was legally irrelevant before the estate was closed but which became the central factual issue. This denied him due process just as the appellant in *Reed* would have been deprived of due process had Texas' new Family Code been applied retroactively to defeat her claim.

Retroactivity violates due process for yet another reason. "The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976). See also *Pension Benefit Guaranty Corp. v. Gray & Co.*, 467 U.S. 717, 729-30 (1984). There must be a nexus between the purpose sought by retroactivity and the conduct of the party to whose detriment the retroactive application works. *Connelly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 229 (1986) (O'Connor and Powell, JJ., concurring).

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<sup>14</sup> For a discussion of this Court's subsequent recognition of the right to transfer wealth, see *Hodel v. Irving*, 481 U.S. 704 (1987).

<sup>15</sup> Cf. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

No rational purpose supports the retroactive application of new law in this case.<sup>16</sup> If the promise of *Turner Elkhorn Mining Co.* is not illusory, then this case provides a vehicle (suggested by footnote 8 in *Reed*) to establish the outer boundary of permissible or impermissible retroactivity.

## B. Due Process Issues

### 1. Jurisdictional Issues

a. Due process requires that a person be afforded an opportunity to be heard before being bound by a judgment. "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy" to a proceeding. *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 327 n.7 (1979).<sup>17</sup>

Hank Jr. repeatedly was declared by final court orders to be the sole heir of his father's estate, most recently by the order granting summary judgment in his favor in this proceeding. That decision, like all of the prior ones, was not appealed and became final under Alabama law.

The only matter before the Alabama Supreme Court was Respondent's appeal of the dismissal of her third party indemnification action against the former administrator of the estate, who had resigned in 1969, and her attorneys and sureties. Hank Jr. was not a party or a privy to the third party action or the appeal. The actions of the

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<sup>16</sup> The class of claimants, whose interest the decision protects, is limited to one, Respondent. Compare *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) with *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470 (1987).

<sup>17</sup> See *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971); *Hansberry v. Lee*, 311 U.S. 32, 40 (1940); cf. *Martin v. Wilks*, 109 S.Ct. 2180, *reh'g denied*, 110 S.Ct. 11 (1989).

Alabama Supreme Court in depriving Hank Jr. of property in an action to which he was not a party directly conflict with the applicable due process decisions of this Court.<sup>18</sup> Failure to adhere to the commonly understood constitutional preconditions for adjudication undermines respect for law. It stretches judicial authority beyond its lawful reach and challenges this Court's carefully considered constraints on the exercise of judicial power. This Court should hear this Petition to maintain discipline in the courts and to re-establish respect for the holdings of this Court.

b. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice . . . and . . . an opportunity to present . . . objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In his Petition for Leave, Hank Jr. confronted the Alabama Supreme Court with the fact that he was not a party or privy to the appeal in which he was ordered to relinquish his vested rights. In response, the court asserted for the first time that Respondent's third-party action was *in rem*; Hank Jr.'s participation was deemed unnecessary. (App. at C-1.8 and C-1.13). *In rem* jurisdiction was viewed as a way to evade constitutional constraints on the exercise of personal jurisdiction.

This is precisely the type of end-run around due process that *Shaffer v. Heitner*, 433 U.S. 186 (1977), was designed to forestall. *Shaffer* held that due process rights "cannot depend on the classification of an action as *in rem* or *in personam*." *Id.* at 206. Justice Marshall noted that it was an unjustified "fiction" to assert that "jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property." *Id.* at 212. Yet, it was precisely this "fiction" that provides the basis for the "*in rem*" analysis of the Alabama Supreme Court. If allowed

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<sup>18</sup> See note 17, *supra*, and accompanying text.

to stand, the skirting of *Shaffer* will undermine and promote disregard for *Shaffer's* core principles.<sup>19</sup>

c. The decision below unsettles the law of estate administration. It is at odds with the long-prevailing doctrine that a decedent's domicile at death or a state's control over his or her affairs does not give that state jurisdiction to adjudicate the status of foreign situated property.

This Court has rejected the view that "the probate decree of the State where decedent was domiciled has an *in rem* effect on personalty outside the forum State that could render it conclusive on the interests of nonresidents over whom there was no personal jurisdiction." *Hanson v. Denckla*, 357 U.S. 235, 249 (1958). A state court has no authority to "enter a judgment purporting to extinguish the interest of [a person over whom it has no jurisdiction] in property over which the court has no jurisdiction." *Id.* at 250. Any such judgment is void. *Id.* at 249.

The principles announced in *Hanson* were not novel. See *Riley v. New York Trust Co.*, 315 U.S. 343, 353 (1942); *Baker v. Baker, Eccles & Co.*, 242 U.S. 394 (1917).<sup>20</sup> Insofar as a judgment affects assets located outside the forum state, it is *in personam*. Such an action can bind only parties to the action or their privies. 242 U.S. at 401. To hold a party bound by a judgment when he or she has not

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<sup>19</sup> See also *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988) (requiring notice and reasonable opportunity to be heard before a claim against an estate can be abrogated); and *Mullane* (court without jurisdiction to render final, binding decree to settle questions about management of a common fund without adequate notice to and hearing for adversely affected parties).

<sup>20</sup> *Riley* and *Baker* both recognized that the *in rem* effect of judgments in probate proceedings does not extend to property located outside of the forum state. *Accord, Overby v. Gordon*, 177 U.S. 214 (1900).



had an opportunity to be heard is "contrary to the first principles of justice." *Id.* at 403.<sup>21</sup>

The Alabama court's purported reliance on "the *in rem* nature of the proceeding" is a transparent attempt to evade the fundamental requisite of due process of law – Hank Jr.'s right to be heard in an action in which vested rights were taken from him. The *in rem* theory also fails because no property of the estate was located in Alabama at the time of the Alabama court's ruling. The estate of Hank Sr. was closed in 1975, and all of its assets were distributed to Hank Jr. Since no estate assets exist, there is no "res" in Alabama or elsewhere.<sup>22</sup>

The Alabama Supreme Court's attempt to justify its divestiture of Hank Jr.'s exclusive rights by terming the action *in rem* runs afoul of longstanding decisions of this Court. Its judgment violates Hank Jr.'s due process rights, unsettles the law of estate administration and is worthy of review.

## 2. Substantive Due Process/Takings Issues

The Constitution protects rights in "property" under the due process and takings clauses. Prior adjudications of the same issues with the same parties over a period in excess of twenty years have created "property" rights. The failure below to recognize the constitutional significance of these vested rights unsettles adjudicated expectations and contradicts established doctrine. This issue is

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<sup>21</sup> Because the property at issue in *Baker* was not located in the forum state and that state lacked *in personam* jurisdiction over the person sought to be bound, the judgment was held not effective over the property.

<sup>22</sup> Further, under *Hanson* the state of domicile of the decedent does not, by that fact alone, have jurisdiction over specific assets within the estate (even if the estate were still open). Where, as here, the action involves the personal rights of one person and no estate assets can be found in the forum state, *in rem* jurisdiction over such assets and rights simply will not lie.

of critical importance to the every-day commercial life of this nation and surely warrants this Court's review.

**a. Unappealed Final Judgments Confer  
"Property" Rights**

The status of Respondent and Hank Jr. with respect to rights of inheritance from Hank Sr. was definitively decided in related judicial proceedings in 1967-68 and reaffirmed, twenty years later, in the trial court proceedings below. (App. H-6, I-5, B-1 and B-2). Since none of these prior judgments were appealed, they became "final." *Benenson v. United States*, 385 F.2d 26, 30 n. 7 (2d Cir. 1967).<sup>23</sup>

The unappealed final judgments – which established Hank Jr. as the sole heir of his father – conferred state-created expectations that, as significant "property" rights, are entitled to constitutional protection under the due process and takings clauses. See *McCullough v. Virginia*, 172 U.S. 102, 123-24 (1898); *Evans v. Chicago*, 689 F.2d 1286, 1296 (7th Cir. 1982).

A property interest should also be recognized in the expectation conferred by the common law rule of *res judicata* itself. The "doctrine of *res judicata* is not a mere matter of practice or procedure. . . . It is a rule of fundamental and substantive justice, of public policy and private peace . . . " that should be enforced in the name of finality and "recognized by those who are bound by it in every way. . . ." *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). Such fundamental principles create the kind of settled expectations that characterize property and warrant being accorded that status. As Professor Moore has stated:

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<sup>23</sup> Irrespective of the correctness or incorrectness of a final judgment, it settles the matters decided between the litigants. Rights established in such proceedings "must be recognized in every way." *Kessler v. Eldred*, 206 U.S. 285, 289 (1907).



[D]ue process . . . should preclude a state from *subsequently* restricting or refusing effect to one of its judgments as *res judicata* beyond a certain point. The reasons . . . are: judicial rights were vested by the judgment; . . . just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under a valid judgment. [emphasis in original] 1B J. MOORE, *MOORE'S FEDERAL PRACTICE*. ¶ 0.406[2] at 278 (2d ed. 1988).<sup>24</sup>

**b. The Alabama Supreme Court Decision Constitutes A Taking of Petitioner's Property.**

Once it is established that protected "property" interests are adversely affected by governmental action, the question becomes whether the government's action is unduly burdensome. See generally *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The adverse effect on property interests can be caused by the action of a state court as well as by that of any other branch of government. See *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930).

Hank Jr. has reasonable, investment-backed expectations derived from the earlier adjudications. Cf. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984). Based on those final determinations, Hank Jr. entered into binding agreements with other parties that will be adversely affected by the decision below. As the sole heir of Hank Sr., Hank Jr. has made a substantial investment in exploiting and protecting rights derived from his estate and has assumed obligations with respect to third parties relative thereto. To question the validity of the title to such rights licensed to third parties would have a far-reaching effect by disrupting the free flow of rights and property derived from any closed estate.

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<sup>24</sup> See note 14, *supra*.

If the interests in "property" are established and investment-backed, the question becomes whether the governmental action strikes an appropriate balance between the competing public and private interests. The Fifth Amendment is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163 (1980). Reasonable burdens may be placed on property in the public interest, but government may not single out and impose special burdens on designated property owners, thereby depriving them of the beneficial use of their property, when those burdens of payment should be spread on all citizens.

The undoing of the settled expectations created by prior judicially-conferred property rights over a period of twenty years places at risk commercial practices that rely on the ability of commercial trading partners, under court approval, to convey good title to "property." This potentially significant impact warrants this Court's attention.

**c. The General Principle That A Judgment Will Not Be Altered on Appeal in Favor of a Party Who Did Not Appeal is of Constitutional Dimension.**

Had it occurred in the federal courts, the decision below would be surely and swiftly overturned. In *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981), this Court held that "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." This Court was very explicit that the "res judicata consequences of a final, unappealed judgment on the merits" are unaltered "by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Id.*

Similarly, in *United States v. Stanley*, 483 U.S. 669 (1987), the district court had dismissed a cause of action

and no appeal was taken from that order. Justice Scalia concluded that the Court of Appeals had no jurisdiction to enter judgment involving the non-appealed order. In a statement that would equally apply to the decision below, Justice Scalia remarked that "[t]he Court of Appeals' action is particularly astonishing in light of the fact that the United States was not even a party to the appeal, which involved only . . . the individual . . . defendants." *Id.*

Hank Jr. was not a party to the appeal to the Alabama Supreme Court. It involved only the third party defendants. Respondent has already lost on the question of her ability to inherit from Hank Sr. in at least three proceedings. Thus, in federal court, *Stanley* and *Moitie* would demand a reversal of the action below. The important question is whether *Stanley* and *Moitie* reflect purely federal supervisory decisions or whether they have constitutional underpinnings.

That the principles of finality and res judicata so forcefully expressed in *Stanley* and *Moitie* have constitutional status can be readily inferred from this Court's decisions in *Moitie* and *Marrese v. American Ass'n of Orthopaedic Surgeons*, 470 U.S. 373 (1985). In *Moitie*, Chief Justice Rehnquist noted that res judicata "serves vital public interests . . . ." and is more than "a matter of practice or procedure inherited from a more technical time . . . ." 452 U.S. at 401. As in this case, parties that do not appeal make a "calculated choice to forgo their appeals." *Id.* at 400-401. Denial of the claim is appropriate because "res judicata . . . is a rule of fundamental and substantial justice . . . ." *Id.* at 401.

*Moitie* suggests a constitutional status for the doctrine of res judicata as a "liberty" or "property" interest under the Fourteenth Amendment which is supported by this Court's subsequent decision in *Marrese*. While recognizing that states have wide discretion in determining the "preclusive effect of judgments in their own courts," this

Court carefully made the scope of such discretion "subject to the requirements of . . . the Due Process Clause." 470 U.S. at 380. *Marrese* reinforces the view that the principles of finality and res judicata embodied in *Stanley* and *Moitie* have constitutional roots – that due process constrains state judicial decisionmaking discretion. *Accord* 1B J. MOORE, MOORE'S FEDERAL PRACTICE, ¶ 0.406[2] at 278 (2d ed. 1988).

This action provides an excellent vehicle for addressing these issues – for determining explicitly, without the need for initial fine-tuning or line-drawing, whether there is a constitutional dimension to the time-honored doctrines of finality and res judicata.

### 3. Procedural Due Process Issues

The Alabama Supreme Court purported to adjudicate long-vested property rights of Hank Jr. in its decision on Respondent's appeal of a third party action to which Hank Jr. was not a party. Due process requires, at a minimum, that any final adjudication of such deprivation be preceded by notice and an opportunity for a hearing appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

When protected property interests are implicated, the right to some kind of hearing is paramount. *Board of Regents v. Roth*, 408 U.S. 564 (1972). No party in the third party action briefed any issue that implicated Hank Jr.'s property rights. (App. at G-2, G-3, G-4, G-5 and G-6). Respondent acknowledged that she did not appeal the adverse decision in favor of Hank Jr. (App. G-6.11), who received no notice of any kind that his rights were being adjudicated in the third party action appeal.<sup>25</sup>

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<sup>25</sup> Cf. *Martin v. Wilks*, 109 S.Ct. 2180, 2185-2186, *reh'g denied*, 110 S.Ct. 11 (1989). (Knowledge of proceedings without joinder therein is insufficient to constitute notice or opportunity to be heard in order to bind a party by a judgment or decree).

The first "notice" that Hank Jr.'s rights were being affected was the July 5, 1989, decision of the Alabama Supreme Court. Hank Jr. promptly sought to be heard by petitioning for leave to appear. The court denied him that most fundamental due process right.

Providing an opportunity to be heard requires that a reasonable forum be provided. See *Fuentes v. Shevin*, 407 U.S. 67 (1972). By denying the Petition for Leave, the Alabama Supreme Court effectively denied Hank Jr. a forum in which to redress his grievances prior to the final deprivation of his property interests. That court definitively decided all issues related both to the status of Respondent as an heir of Hank Sr.'s estate and to the stripping of Hank Jr. of his vested rights in the estate. All of this was accomplished without furnishing Hank Jr. any forum in which to defend his constitutionally protected interests.

Under this Court's decisions in cases such as *Mullane* and *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), the failure to provide notice and opportunity to be heard violated due process.

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## IX. CONCLUSION

Petitioner Randall Hank Williams, Jr. has been deprived of long-vested property and property rights by the Supreme Court of Alabama in an action to which he was not a party or a privy. It has done so in violation of his rights under the Constitution of the United States. The Alabama Supreme Court has impermissibly retroactively applied judicial decisions and statutory enactments to an estate, which has been closed with judicial approval for over ten years, in order to deprive Petitioner of his property. It has done so without providing Petitioner any notice or opportunity or forum in which to be heard. It has ignored the fundamental, time-honored principles of finality and repose. The actions of the Alabama Supreme Court are unprecedented and its violation of Petitioner's

constitutional rights directly conflict with applicable decisions of this Court. For these reasons, Petitioner respectfully requests that this Petition be granted.

Respectfully submitted,  
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THE STATE OF ALABAMA - JUDICIAL DEPARTMENT  
THE SUPREME COURT OF ALABAMA  
OCTOBER TERM, 1988-89  
Catherine Yvonne Stone

87-269

v.

Gulf American Fire and Casualty Co., et al.  
Appeal from Montgomery Circuit Court  
(CV-85-1316-K)  
(Released July 5, 1989)

MADDOX, JUSTICE.

This appeal involves the estate of the late Hiram "Hank" Williams and concerns the rights of Catherine Yvonne Stone, an illegitimate child who, in 1985, was declared by the trial court in this proceeding to be the natural child of Hank Williams, and the major questions presented are whether two final judgments entered in 1967 and 1968, which determined that Stone had no rights to share in the estate, can be reopened because of an alleged "legal fraud."

Stone appeals from a summary judgment against her third-party complaint, in which she asked that the two former judgments be set aside, which judgments had been entered in favor of third-party defendants Irene Smith; Jones, Murray and Stewart, P.C.; Gulf American Fire and Casualty Company; American States Insurance

Company (as successor in interest of Gulf American); and several fictitiously named parties.<sup>1</sup>

This case began as an action for declaratory judgment filed by Randall Hank Williams (hereinafter "Williams, Jr."), along with Roy Acuff and Wesley Rose, the trustees in liquidation of Fred Rose Music, Inc., and of Milene Music, Inc., seeking a declaration that Stone was barred from establishing that she is the natural child of Hank Williams and from asserting any claim or entitlement to his estate or to any interest or royalties flowing therefrom.<sup>2</sup> Stone filed a counterclaim on these issues, and, in

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<sup>1</sup> Irene Smith and Robert Stewart were the administratrix and administrator of the Williams estate, and Gulf American wrote the bond. The estate of Robert B. Stewart was dismissed as a third-party defendant by Stone on March 25, 1987.

<sup>2</sup> In their complaint for declaratory judgment, they asked for the following relief:

"2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiram "Hank" Williams or the aforesaid copyright interests or renewals thereof.

"3. That in the event this Court alters, modifies or otherwise changes the prior Orders and Judgments in Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiram Hank Williams and the copyright and renewal copyright interests of the musical compositions of Hiram 'Hank' Williams.

(Continued on following page)

addition, the third-party complaint that now constitutes the basis of this appeal.

In her third-party complaint, Stone alleged an intentional, willful, fraudulent, and conspiratorial concealment from the court of her identity and potential claim to the estate of Hank Williams.<sup>3</sup> She requested that the estate be reopened and that she receive her proportionate share of the estate,<sup>4</sup> that she be awarded punitive damages, and that the sureties for the estate, Gulf American and American States, compensate her for damages not recovered against the other third-party defendants or real parties in interest.

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(Continued from previous page)

"4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

<sup>3</sup> In her first claim for relief in her third-party complaint Stone named Smith, Stewart, and several fictitiously named real parties in interest and alleged, inter alia, that "[f]rom in or about 1953 through sometime in 1967, Smith, Stewart and [Jones, Murray and Stewart], through Stewart, and real parties in interest C, D, E, F, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim, and rights as [a] natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the court."

<sup>4</sup> Stone's first claim for relief requested the following:

"1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.

"2. That Stone be entitled to share her proportionate interest in all property and income of the estate."

In the proceedings below, the trial court entered summary judgment in favor of Williams, Jr., Acuff, and Rose on all issues contained in their original complaint and in Stone's counterclaim, with the exception of the issue of Stone's paternity, which it reserved for trial, and the trial court entered summary judgment in favor of all third-party defendants, including those fictitiously named, on Stone's third-party complaint, in which she asked, among other things, that the estate be reopened because of legal fraud. After a trial on the issue of paternity, the court found that Catherine Yvonne Stone is the natural child of Hank Williams. No appeal was taken from this judgment of paternity, and this finding is undisputed on appeal.<sup>5</sup>

#### Statement of the Facts

An understanding of the unique facts underlying this action is requisite to an understanding of this case, and it is because of these unique facts that we fashion the relief we do in this case. The trial judge entered a lengthy order in which he detailed the facts. We could include those findings, which we find to be supported by the record, in this opinion, but we think that a summary of those facts will be sufficient.

On October 15, 1952, Hank Williams entered into an agreement with Bobbie W. Jett relative to the custody and support of an unborn child carried by Jett. The agreement was prepared by and executed in the presence of Robert

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<sup>5</sup> Stone did not appeal the adverse ruling on her counterclaim either. We will discuss that issue in this opinion under the section "Relief Granted" *infra*.



B. Stewart, an attorney in the general practice of law in Montgomery, Alabama, who was one of the third-party defendants. The agreement provided, in part, as follows:

"This agreement made this 15th day of October, 1952, by and between Hank Williams of Montgomery, Alabama, and Bobbie W. Jett of Nashville, Tennessee,

"WITNESSETH

"WHEREAS, the said Bobbie W. Jett is at the present time pregnant and expects to be delivered of a child on or about the 1st day of January, 1953, and the said Hank Williams may be the father of said child, and,

"WHEREAS, it is the mutual desire of both parties to provide for the necessary expenses of the said Bobbie W. Jett and of the child to be born,

"IT IS NOW, THEREFORE, mutually agreed by and between the said Bobbie W. Jett and the said Hank Williams as follows:

" . . . That the said Hank Williams will provide room and board for the said Bobbie W. Jett in Montgomery, Alabama, from October 15th until the date said child is born  
. . . .

" . . . That said Hank Williams shall pay all doctors and hospital bills in connection with the confinement of the mother and birth of the child . . . .

" . . . Within 30 days after the birth of said child, the said Hank Williams shall provide a one-way plane ticket to the said Bobbie W. Jett from Montgomery to another place in California which she may designate  
. . . .

" . . . After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery [Hank Williams's mother], and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. During said two year period that the child is in custody of Mrs. Stone, both the *father*, Hank Williams, and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. *Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported . . . by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties, that is, during the winter months or school months the child shall remain with Hank Williams and during the summer months or school vacation months the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother. During the time that the child is in the custody of the father, Hank Williams, the mother shall have the right to visit it at reasonable times, and at reasonable hours, and during the time it is in the custody of the mother during the summer months the father shall have the same privilege of visitation.*

" . . . In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by the agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

"IN WITNESS WHEREOF, the parties have hereunto set their hands and on the day and date first above written.

"/s/ \_\_\_\_\_  
"Bobbie W. Jett  
"/s/ \_\_\_\_\_  
"Hank Williams"

(Emphasis added).

On January 1, 1953, Hank Williams died intestate. Five days later, Bobbie Jett gave birth to a baby girl; she named the child Antha Bell Jett. By agreement, the child was left with Hank Williams's mother, Mrs. Lillian Williams Stone, and Jett left the state. Mrs. Stone immediately instituted adoption proceedings, and a final decree of adoption was entered on December 23, 1954. The child's name was changed to Catherine Yvonne Stone.

Shortly thereafter, on February 26, 1955, Lillian Stone died. Other family members were either unable or unwilling to care for the child, and, thus, at the age of two, she became a ward of the State. The child remained in foster homes until she was eventually adopted on April 23, 1959, at the age of six, by a Mobile couple, George and

Mary Deupree. Her name was then changed to Cathy Louise Deupree.

In that year, an action was brought on behalf of Williams, Jr., to obtain court approval of a contract between Fred Rose Music, Inc., and Williams, Jr., concerning his interest in the copyright renewals of his father. The matter of the Stone child was not raised in that proceeding, even though the record now before us shows that the parties to that contract knew of the agreement executed by Williams, Sr., and also that the State of Alabama, by and through its Department of Pensions and Security, knew of her parentage. Then, in 1967, Audrey Williams,<sup>6</sup> the mother of Williams, Jr., filed a petition in Montgomery Circuit Court for final settlement of the estate. She also instituted related proceedings in 1968, concerning the guardianship estate of Williams, Jr. At the time of the 1967 and 1968 proceedings, Irene Smith, the sister of Hank Williams, was the administratrix of the estate. It was in Smith's answer to Audrey Williams's petition that the court was advised, apparently for the first time, of the existence of the agreement and of the potential claim of the Stone child. In both the 1967 and the 1968 proceedings, the court appointed Drayton Hamilton, a Montgomery attorney, to serve as the child's guardian ad litem. Hamilton had previously served as her guardian ad litem in 1963 in proceedings relating to the estate of Lillian Stone; however, the record shows that in 1963, Hamilton knew only that Stone was an adopted child of Lillian Stone *and was not aware of her natural parentage.*

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<sup>6</sup> Audrey Williams and Hank Williams divorced in 1952.

During 1967 and 1968, Stone lived in Mobile with her adoptive parents. Hamilton notified the Deuprees of the proceedings, but they refused to participate in any matters involving the child's natural father. Despite the Deuprees' adverse position, Hamilton continued to represent the child and actively attempted to establish her rights. Even so, on December 1, 1967, Judge Richard P. Emmet, of the Montgomery County Circuit Court, issued an order stating that Stone had no right to inherit from the estate of Hank Williams. In a second order issued on January 30, 1968, in the related guardianship estate case of Williams, Jr., Judge Emmet again reiterated that Stone had no right to inherit from the estate. In neither proceeding did the court address the issue of Stone's paternity. After the court's adverse ruling, the guardian ad litem sought permission to appeal on behalf of the Stone child; however, the court denied him permission, and he did nothing further on the child's behalf.<sup>7</sup>

Despite the court's rulings in the 1967 and 1968 proceedings, once Stewart became the administrator of the estate in 1969, he began setting aside money for Stone in the event that she ever claimed an interest in the estate. However, the estate was closed in August 1975, without further incident.

The record shows that it was not until 1974, when Stone was 21 years of age and attending the University of Alabama, that the truth of her paternity was ever suggested to her. During that year, she was informed that the

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<sup>7</sup> For a more detailed discussion of why the guardian ad litem did not appeal, see *infra* at pp. 24-26.

Montgomery Circuit Court was holding certain funds for her from the *estate of Lillian Stone*. She was not informed that Stewart had been setting aside money for her. All the court records pertaining to the 1967 and 1968 proceedings were sealed. Stone traveled to Montgomery and received the proceeds of the *Lillian Stone estate*, and it appears that it was at that time that she began to seriously seek information concerning her natural parentage.

On October 17, 1979, Stone arranged a meeting with Emogene Austin of the Alabama Department of Pensions and Security for the purpose of verifying her paternity. The record shows that at that time she apparently did not know the name of her natural mother but suspected that Hank Williams was her natural father. Ms. Austin revealed the agency's information to her concerning her background, including information indicating that her natural father was Hank Williams; that information shows that the State of Alabama knew of her background from almost the beginning. However, throughout this time, all of the records concerning her paternity remained sealed by the Montgomery Circuit Court, and she had no knowledge of the existence of the custody and support agreement or of the fact that Stewart had been setting aside her share of the estate, even after the 1967 and 1968 decrees were entered.

Stone continued to search for and retrieve documents and other information bearing on this subject through the early part of 1985. On July 1, 1985, she filed an action in Montgomery Circuit Court requesting that documents relating to her paternity, formerly placed under seal by the Montgomery Circuit Court, be released to her. On August 5, 1985, Stone sent a demand letter to Williams,

Jr., Acuff, and Rose, advising them of her claim in the estate and asking to share in the copyright renewals of her father, Hank Williams. Subsequently, on September 10, 1985, Williams, Jr., Acuff, and Rose filed the action for declaratory judgment that eventually led to this appeal.

### Issues

The primary issues presented by this appeal are:

- I.) whether the former judgments rendered in the 1967 and 1968 proceedings involving Stone's right to share in the estate of Hank Williams can be reopened by reason of legal fraud on the court; and, if so,
- II.) whether Stone's claim to set aside the former judgments is barred by the equitable doctrine of laches; and, if not, then
- III.) to what relief, if any, is Stone entitled?

In determining the primary issues, we also address the following questions:

- a) whether the administrator or the attorney for the estate, having independent knowledge of Stone's claims to the estate, had a duty to notify the court of these facts;
- b) whether the trial court's failure, in the 1967 and 1968 proceedings, to grant the guardian ad litem permission to appeal the adverse ruling on behalf of Stone constitutes an error of law sufficient to warrant modification of the judgment;
- c) whether an illegitimate child is entitled to inherit from her natural father;
- d) whether the doctrines of res judicata and collateral estoppel are applicable to the issues involved in this case; and finally,



- e) whether Stone's adoption, two years after the death of her natural father, precludes her from establishing her paternity for the purpose of intestate succession.

### Fraud

We now address the first issue, concerning legal fraud. Stone argues that the trial court erred in entering a summary judgment for the third-party defendants in this case because, she says, the evidence shows that they fraudulently conspired to keep certain facts relating to her existence, identity, and potential claim to the estate of Hank Williams concealed from the court. We agree.

The record contains substantial evidence from which a factfinder could conclude that third-party defendants Robert Stewart and administratrix Irene Smith and others withheld from the court before and during the 1967 and 1968 proceedings material facts concerning the issue of Stone's paternity. The evidence that follows indicates the series of events that transpired both prior to and following the death of Hank Williams that directly affected the fate of the child for whom Williams had unequivocally accepted responsibility by executing an agreement which contains some equivocation, but in which he referred to himself three times as the "father." These events ultimately resulted in the foreclosure of any contract right that the child might otherwise have had under the 1952 custody and support agreement, as well as the adverse judgments concerning her right to inherit, which are now the subject of this appeal.

The record shows that on October 15, 1952, Hank Williams accompanied Bobbie Jett to the law offices of his

attorney, Robert Stewart, to discuss a legal arrangement concerning an unborn child being carried by Jett. Mrs. Lillian Stone, Hank Williams's mother, was also present. At this meeting, Stewart prepared the custody and support agreement involved in the present lawsuit. According to Stewart's testimony in the 1967 proceedings, he represented only Hank Williams at the time the agreement was executed and at no time was Bobbie Jett or the unborn child represented by counsel.

After Hank Williams's death in January 1953, it was Stewart who prepared the letters of administration that were issued to Williams's mother, Lillian Stone, as administratrix. Although Stewart knew of the child's existence, identity, and potential claim to the estate, because he had drafted the custody and support agreement only three months earlier, the letters of administration contained only the names of the following persons as heirs and distributees of the estate:

"Billie Jean Jones 'who states she is the widow,'

"Randall Hank Williams, Jr.,

"Mrs. Irene Williams Smith, a sister,

"Elonzo H. Williams, father, and

"Lillian S. Stone, mother."

It is interesting to note that the list did include Billie Jean Jones, "who states she is the widow" of the deceased; yet, *it did not include Stone.*

Over the course of 22 years following the death of Hank Williams, Stewart remained actively involved in the affairs of the Williams family. Throughout the years 1953 to 1975, Stewart served as the attorney for the estate, and

from 1969 through 1975 he also served as the administrator of the estate.

In 1953, Stewart even acted as Lillian Stone's attorney in her action to adopt the child. The record shows that at all times, Mrs. Stone held the child out to Stewart and to the world as the daughter of her deceased son, Hank Williams. This is evidenced by the following notes taken during an investigation conducted by the Montgomery County Department of Public Welfare, prior to Mrs. Stone's adoption of the child:

"1/28/53

"Mrs. Stone discussed her situation with ease throughout the entire interview, but cried during the time that she was talking. She said that she was in the office in regard to a child which was born on January 6, 1953. She explained that the child is the daughter of Bobbie Webb Jett *and that the father of the child is her son, Hank Williams, deceased.* She brought with her a letter stating to whom it may concern and signed by Mr. Williams. It said that he would be responsible for the delivery of this child at the hospital where the mother desired. . . . She mentioned that she took care of Miss Jett throughout the pregnancy . . . [and] that her son took care of all the expenses during this time.

" . . . She stated that Miss Jett had left the child at her home during the time that she was making a visit to Butler County, her home, and that she does not know what Miss Jett plans to do. She stated that she does not wish to keep the child unless she can adopt her and that she would be tremendously interested in doing so. *While crying, she stated that she knew that this is what her son would want her to do, and he once commented that he did not feel that Miss Jett was a*

*suitable person to take care of the child. Mrs. Stone seemed quite devoted to the child and it was apparent that she was very desirous to keep this child as it appeared that she would feel closer to her son. She went on to say that Miss Jett lives in Nashville and that all their papers are with [Mrs. Stone's] lawyer, Mr. Robert B. Stewart. . . .*

"\* \* \* \*

"During this interview, Mrs. Stone commented that she had a heart ailment and worker gathered that it must be somewhat serious. She said that Mr. Stewar[t] was not in accord with their adopting the child because of this heart condition and I went into a discussion with her asking her whether or not she was able to take care of the child and what plan would be made for its future in the event that this baby was left parentless. She stated that her daughter, Mrs. Irene Smith of Portsmouth, Va. would be glad to take the child and I wondered if she would be interested in taking her at this time. Mrs. Stone would not want her to take the child as she would like to have the baby herself." (Emphasis added.)

The adoption became final on December 23, 1954, following which Stewart continued to remain closely associated with the Williams family, and, in particular, with Irene Smith, Hank Williams's sister. The following letter, dated April 6, 1953, when the child was three months old, evidences the relationship of Smith and Stewart with regard to the estate of Hank Williams and the Stone child:

"Dear Mr. Stewart:

"\* \* \* \*

"The idea you have about making Billy [Hank Williams's reputed widow] a legal wife isn't bad at all but I fear that once you accept

her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.

"\* \* \* \*

"Thanks for sending the royalties check. It sure came in handy . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that the poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. It won't be three years before someone will start telling it that it isn't exactly like other children. Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. I don't want a thing that we don't work for ourselves and whether or not I get that house or not doesn't bother me in the least. I am only thinking about that child. It may be the one thing that will help mother live to be a hundred[;] lets hope so. She seems to love it very much and will perhaps give it a wonderful chance."

Lillian Stone died on February 26, 1955. At that time, Smith became the administratrix of Hank Williams's estate and remained administratrix throughout the 1967 and 1968 litigation, until she relinquished her duties to Stewart in 1969. Also, after Lillian Stone's death, Smith and Stewart became directly involved in the decision-

making process concerning the fate of the child. The record shows that after Smith refused to fulfill her previous commitment to care for the child in the event that it ever became necessary, she initiated procedures to make the child *a ward of the State*. She was successful in her efforts, in part, because Mr. Stone, Lillian Stone's spouse, was unable to care for the child alone. The records of the Montgomery Department of Public Welfare reflect these events, as follows:

"3/10/55

"Mr. Bob Stewart, lawyer for Mrs. Stone, [deceased], called Miss Rainer on this date and stated that Mrs. Stone's daughter, Irene Smith, would like to come to the office to discuss what would be best for Kathy Stone, the adopted daughter of Mrs. Stone . . . .

"Later: Mr. and Mrs. Smith in office by appointment. Mrs. Smith stated that she felt that it would be for the best interest of Kathy if the child was placed for adoption and was no longer associated with Hank Williams' family. She explained that she and her husband were devoted to the child and would be perfectly willing to keep the child but feels that there would always be publicity and gossip connected with this baby. Mrs. Smith states that she knows she agreed to take Kathy in the event anything happened to her mother and that she is still willing to take the child but feels strongly that the child would always be subjected to ugly gossip and vicious rumors and would possibly be hurt very deeply in later years by this talk.

"Mr. and Mrs. Smith are at present living in Dallas, Texas, where Mr. Smith is in the Navy but Montgomery is their home and they plan to come back [here] in five (5) years when Mr.



Smith can retire. They also plan to return to Montgomery each year for the Hank Williams Memorial and Mrs. Smith stated that she could just hear the tongues wagging now when Kathy would ride down the street in an automobile as part of the parade to commemorate Hank. For these reasons Mrs. Smith feels that Kathy could lead a much more normal life if she was placed for adoption with another family. Mrs. Smith seems to be very sincere and earnest in her opinions [sic] about Kathy's future, and reiterated that she was not trying to get out of raising this child. She does not want this department to think that she is shirking her duty or ashamed to take the child and kept asking if we did not agree that she was right in her way of thinking. Both Mr. and Mrs. Smith stated that if Montgomery were not their home and they did not plan to reside here permanently at the end of Mr. Smith's tour of duty with the Navy, that they would not hesitate to take Kathy and raise her as their own child. They feel that so many people know about the child however that wherever [sic] they might live, rumor and gossip would catch up with them and Kathy would always be affected by unfavorable publicity.

"We explained to Mr. and Mrs. Smith that as the adoption had been granted final, Mr. Stone was the legal parent . . . and we wondered how Mr. Stone felt about placing the child for adoption. Both Mr. and Mrs. Smith stated that Mr. Stone was a very emotional person and he would like for the Smiths to take Kathy and rear her. They have not talked to him as yet about what would be best for Kathy but they feel that they would have a hard time making Mr. Stone see their point of view. . . .

"At the present time, Kathy is staying part time with the Smiths and part time with Marie Glenn . . . Mrs. Smith stated that Kathy was



much happier with Marie than she was with the Smiths as she cried continuously while they had her. Mrs. Smith stated that Kathy was a very nervous child and seemed to miss Mrs. Stone a great deal. Mrs. Smith wondered if it was all right for Kathy to remain with Marie until other plans could be worked out. Worker told Mrs. Smith that we felt wherever the child was happiest would be all right until permanent plans could be made.

" . . . Mrs. Smith stated that she was very anxious to have the placement of the child settled as she had already received numerous telephone calls asking what would become of the child. She states that she did not realize so many people knew about this child but she has had telephone calls from Ohio and other various states regarding Kathy and who Kathy would live with now. Mrs. Smith seems to feel there will be a great deal of publicity regarding Kathy's placement. Mrs. Smith was assured that all of our dealings would be strictly confidential and it would be handled as quietly as possible. . . .

"3/11/55

"Mr. and Mrs. Smith and Mr. Stone in office late in the afternoon. Mr. Stone apologized that he was in his work clothes and said that he came straight from work. Mrs. Smith stated that she had told Mr. Stone their feelings regarding their not taking Kathy and he seemed to understand. Mr. Stone stated that he could not possibly take care of Kathy and he guessed it would be best for her to be placed for adoption. Mr. Stone was quite emotional and cried but after a lengthy discussion stated again that he could see nothing else to do but have the child placed for adoption. He seemed sincere in his decision and signed a Boarding Home Agreement with

this Department. We explained to Mr. Stone that we would make an appointment with him to go to the Juvenile Court to sign a Petition and would place Kathy in a boarding home until permanent plans could be made for the State to assume her custody.

"3/15/55

"Worker met Mr. Stone at the Juvenile Court after an appointment had been made. Mr. Stone told Mrs. Dees that he felt this was the best plan for Kathy although it hurt him very deeply to give her up. Mr. Stone was very emotional and cried during the interview . . . .

"3/17/55

"Mrs. Smith in office by appointment as we explained that we would like as much background information on the alleged father of Kathy as possible as it would help in finding the most suitable home for the child. Mrs. Smith seemed to thoroughly understand and was quite willing to give any information and cooperate in every way. Mrs. Smith told us that Hank Williams was six feet, two inches (6' 2") tall, had a rather dark complexion which she would classify as almost olive. She said that she has the same skin which worker would say was almost olive. Mr. Williams was a brunette with brown eyes. He attended school through the tenth grade but did not like school too well. She added that he was very capable and made excellent grades in the things that he liked. He started singing at the age of five (5) and started playing the guitar at age seven (7). Mrs. Smith stated that she would consider her brother a musician, poet, composer, and philosopher."

On April 22, 1955, less than two months after Lillian Stone's death, Stone was made a ward of the State.

The record shows that Stewart acted as the attorney for the estate as early as 1953 and that Smith became the administratrix in 1955, but neither apprised the court of the evidence of the child, despite their intimate knowledge of her claims as a potential heir to the estate and as a possible creditor under the terms of the agreement to provide support. The following letter, dated February 28, 1962, written to Stewart by attorney Harold Orenstein, legal counsel for Wesley Rose, shows Stewart's knowledge of Stone's potential right to share in her father's copyright renewals:

" . . . From the documents which you have furnished to me, Catherine Yvonne Stone (born Antha Belle Jett) was returned to the State of Alabama Welfare department after the death of Lillian Stone, and then re-adopted by persons unknown. *Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened.* However, we note that the child was given a certain sum of money for its 'homestead' rights in the property of Lillian Stone. . . . *It would seem that some token payment to the State of Alabama Welfare Department again on behalf of this child may or may not be indicated (depending upon your viewing of the Alabama law). There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals. We should like to have further comment from you regarding the foregoing.*

" . . . I shall confer with Wesley [Rose] after he has received [a] copy of this letter and, after having heard from you regarding Catherine

Yvonne Stone, proceed to draw up an agreement which we can present both to the courts and to Audrey Williams." (Emphasis added.)

In a second letter, dated July 5, 1962, Stewart responded:

"None of this would seem to affect the child's statutory right to copyright renewal. . . .

" . . . Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, *we may be faced with a difficult problem, and certainly one we would not want to litigate.*

"As possible alternatives we can:

"a. Consider that by the adoption all rights under the renewal statutes have been lost.

"b. Try to explain the matter to our Welfare Department, which does not want the child ever to know its background, *but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.*

"c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. *If we use this procedure, the guardian ad litem will have to be told what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.*

"I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with an understanding of the facts by the court. My

alternatives are not much better, but perhaps you can improve on them with a little thought." (Emphasis added.)

No proceedings concerning the estate of Hank Williams were ever instituted on behalf of the Stone child. However, as stated earlier, in 1967, when Audrey Williams petitioned the court for final settlement of the estate on behalf of Williams, Jr., Smith, as administratrix, finally advised the court that there might possibly be an illegitimate child of the deceased somewhere, and the court then appointed Drayton Hamilton to serve as the child's guardian ad litem in both the 1967 and 1968 proceedings.<sup>8</sup>

The record shows that during the 1967 proceedings, Hamilton called Stewart to testify concerning his knowledge of the circumstances surrounding the child's claim to the estate. Again, despite Stewart's extensive knowledge of these circumstances from his involvement with the child's father, mother, grandmother, and aunt, he revealed nothing, with the sole exception of producing the original custody and support agreement. Certainly he did not reveal the contents of all the correspondence and

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<sup>8</sup> It is interesting to note that Smith, who was the administratrix for the estate during 1967 and 1968, also acted as the guardian for Williams, Jr., during these proceedings. Further, she had also acted as the guardian for Williams, Jr., while administratrix, in 1963, in the proceeding to allow Williams, Jr., to contract with Fred Rose Music, Inc., concerning his interest in his father's copyright renewals. It is also interesting that this procedure is in substance the one suggested by Stewart in his July 5, 1962, letter, as alternative "c", that is, a legal way to cut off Stone's right to copyright renewals she was entitled to under federal law, even though illegitimate.

information he knew concerning Stone's adoption and the information furnished to the Department of Pensions and Security. Smith, too, aside from advising the court of the existence of the child, remained silent about what she knew.

Stewart's plan, as proposed in his July 5, 1962, letter to Wesley Rose's attorney, suggested that the person appointed as guardian ad litem "might be vigorous in asserting this right [to copyright renewals]." Hamilton was vigorous. He fought for the child's rights, even without material evidence concerning her paternity. Hamilton argued that Hank Williams had accepted the child as his own and had made legal arrangements to have full custody and control of the child, and that if the law did not recognize her right to inherit simply because she was illegitimate, then the law was unconstitutional and should be changed.<sup>9</sup> Despite Hamilton's efforts, with the

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<sup>9</sup> In fact, on May 28, 1968, just 4 months after Judge Emmet denied the guardian ad litem permission to appeal, the Supreme Court of the United States, in *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968), commented on the harsh common law concept that illegitimate children were *nullius fillius*, as follows:

"We start from the premise that illegitimate children are not 'nonpersons.' They are humans, live, and have their being. They are clearly 'persons' within the meaning of the Equal Protection Clause of the Fourteenth Amendment.

"\* \* \* \*

"Why should the illegitimate child be denied rights merely because of his birth out of wedlock?

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evidence that it had before it at the time, the trial court ruled against the child in both the 1967 and 1968 proceedings.<sup>10</sup> Hamilton, then as the guardian ad litem, requested permission to appeal the rulings on behalf of the child,

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He certainly is subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy?"

391 U.S. at 70-71.

<sup>10</sup> In its December 1, 1967, order, the court stated:

"In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiram Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiram Hank Williams . . . ."

Furthermore, in its January 30, 1968, decree, the court stated that while it was "impressed with the argument of the Guardian Ad Litem [for Stone]," and "adopt[ed] the sound reasoning . . . that the time is long past due when illegitimate offspring should be afforded adequate property rights," the court, nevertheless, found that Stone had been adopted and that her adoptive parents, after having been notified of the proceedings, "chose not to pursue any action in regard to these proceedings," and that she could not recover.

The trial court's conclusion that adoption precluded an "after-adopted" illegitimate child from inheriting was erroneous, however. This subject is discussed, *infra*, under the heading "Intestate Succession and the Illegitimate Child."



but the court refused to grant permission. Thus, Hamilton's court-appointed representation of the Stone child ended, and nothing further was done on her behalf.<sup>11</sup>

Despite the court's rulings in the 1967 and 1968 proceedings, when Stewart became the administrator of the estate in 1969, he began setting aside a share of the estate for Stone. During that time, in a series of letters to the attorney for Williams, Jr., Stewart wrote that "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." Stewart's concealment with regard to the Stone child continued, and in April 1974 he alerted counsel for Williams, Jr., that Stone had traveled to Montgomery and claimed her homestead that had been set aside for her in the Lillian Stone estate. Stewart wrote: "[Her] ancestry may well be reasonably obvious to her, and further trouble may ensue." However, the estate of Hank Williams was closed in August 1975, without further incident, and the money that Stewart had been setting aside for Stone was distributed along with the other assets of the estate.

The law in Alabama concerning legal fraud has been stated by this Court as follows:

"To constitute fraud, in its legal significance, it is not necessary that one intend to injure another. . . .

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<sup>11</sup> See our discussion, *infra*, under "Error of Law," concerning the right of a guardian ad litem to appeal an adverse ruling on behalf of a child, and the duties of a guardian ad litem and the duty of the court when a minor's interest is involved.

" 'If fraud is proved the law will infer an improper motive, and the actual motive of the speaker is immaterial. In other words, it is not essential that the [misrepresentor] be motivated by a desire to injure complainant or to benefit himself; and it makes no difference that his motive was solely to benefit a third person.' "

*Duncan v. Johnson*, 338 So. 2d 1243, 1250 (Ala. 1976) (quoting C.J.S. *Fraud* § 26). With regard to fraud on the court, this Court has further recognized the following principles:

" '[Where] the fraud itself [is] to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault. . . . ' "

*Duncan*, 338 So. 2d at 1251 (quoting *Bolden v. Sloss-Sheffield Steel & Iron Co.*, 215 Ala. 334, 335, 110 So. 574, 575 (1925)). Stated differently:

" 'Where [fraud] relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceeding, and equity will interfere.' "

*Eskridge v. Brown*, 208 Ala. 210, 211, 94 So. 353, 354 (1922) (quoting 6 *Pom. Eq. Jur.* at 1092) (emphasis added).

The idea that as an attorney, Stewart had a fiduciary relationship with the estate of Hank Williams, his client, is elementary. See *Jones v. Caraway*, 205 Ala. 327, 87 So.

820 (1921); *Kidd v. Williams*, 132 Ala. 140, 143, 31 So. 458 (1901); and *Yonge v. Hooper*, 73 Ala. 119 (1882). In *Yonge*, this Court recognized that

"[an] [a]ttorney and client sustain to each other the severe relation of trustee and *cestui que trust*, and their dealings together are subject to the same intendments and imputations, as those which obtain between other trustees and their beneficiaries."

*Yonge*, 73 Ala. at 121.

Furthermore, Stewart, as administrator, and Smith, as administratrix, held the position of a trustee, and their administration of the estate was that of a trust. See *Clark v. Clark*, 287 Ala. 42, 47, 247 So. 2d 361, 365 (1971); *Keith & Wilkinson v. Forsythe*, 227 Ala. 555, 557, 151 So. 60, 61 (1933). In *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 451, 74 So. 2d 608, 612 (1954), this Court recognized that

"[a]n executor occupies a position of trust with respect to those interested in the estate and is the representative of the decedent, of creditors and of the legatees and distributees."

(Citing *Durden v. Neighbors*, 232 Ala. 496, 168 So. 887, 889 (1936); and *Amos v. Toolen*, 232 Ala. 587, 168 So. 687, 692 (1936).) At the time this estate was being administered, the law of Alabama imposed the following requirements upon an administrator:

"In making settlements of an administration, the executor or administrator must proceed as follows:

"\* \* \* \*

"He must, at the same time, file a statement, on oath, of the names of the heirs and legatees

of such estate, specifying particularly which are under the age of twenty-one years. . . ."

Tit. 61, § 295, Code of Alabama, 1940, presently Code 1975, § 43-2-502. This Court has held that an administrator who knowingly and willingly conceals from the court administering an estate the name of an heir or distributee, is guilty of such a fraud on the court as to authorize a court of equity to set the decree of settlement aside. See *Fidelity & Deposit Co. of Maryland v. Hendrix*, 215 Ala. 555, 112 So. 117 (1927); and *cf.*, *Leflore By and Through Primer v. Coleman*, 521 So.2d 863 (Miss. 1988); *Smith By and Through Young v. Estate of King*, 501 So.2d 1120 (Miss. 1987); *Matter of Estate of Flowers*, 493 So.2d 950 (Miss. 1986).

We recognize, generally, that mere silence does not constitute fraud; however, a different rule applies where confidential relations or particular circumstances exist. Code 1975, § 6-5-102, provides:

"Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. *The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case.*" (Emphasis added.)

Furthermore, it has been recognized that

"[a] fiduciary duty need not spring from a legal relation but may arise from a relation which is merely moral, social, domestic, or purely personal in character, and that fiduciary relations embrace not alone the obviously confidential relations such as attorney and client, principal and agent, guardian and ward, and the like, but also every relation in which as matter of fact there is confidence reposed on one side and a

resultant domination and influence on the other."

17 C.J.S. *Contracts*, § 154 at 911 (1963).

In the present case, both Stewart and Smith had a legal obligation, as either the attorney or administrator of the estate or because of the particular circumstances involved, to advise the court at the earliest possible date that the Stone child existed and possessed potential claims to the estate as an heir, being a natural child of the deceased, and as a creditor under the child support agreement. *Because the corpus of the estate involved copyright renewals, and because illegitimates could share in such rights under federal law, the "particular circumstances" of this case make the legal obligation a weightier one.* The evidence shows that Stewart, as administrator, and as attorney for Smith, knew that the child had a substantial claim to the copyright renewals.<sup>12</sup> Except for efforts by guardian ad litem Hamilton, no effort on behalf of Stone was made to establish her right to inherit or to establish her contract claim for child support under the 1952 agreement. Likewise, because all of the material circumstances surrounding her paternity were never made known to the court in the ancillary proceedings brought on behalf of Williams, Jr., Stone never received a "fair adversary proceeding," to which she was entitled by law. See *Eskridge*, 208 Ala. 210, 211, 94 So. 353, 354 (1922).<sup>13</sup>

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<sup>12</sup> His withholding of one-half of the monies, even after the favorable 1967 and 1968 decrees, and his 1962 correspondence shows his concern about the child's ever discovering who she was.

<sup>13</sup> We note that, usually, paternity or legitimation proceedings are initiated by a parent of the child; however, in this case  
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Whether Stewart and Smith intended to deceive the court or merely sought to protect their own interests or the interests of Williams, Jr., or any other parties interested in the estate, or whether they intended to injure the Stone child is immaterial. Inasmuch as they remained silent about material facts concerning the Stone child, known to them, upon which the law imposed a legal duty to communicate, their actions constituted legal fraud. See Code 1975, § 6-5-102, formerly Tit. 7, § 109, Code of Alabama, 1940.

Further, it would appear that Smith's eventual notification to the court about the agreement, in 1967, was not for the purpose of showing Stone's right to share in the estate, but, rather, for the opposite purpose of showing that she had no right to share in the estate.<sup>14</sup> In her answer to the 1967 action, Smith responded that "she believes Randall Hank Williams is the sole heir of his

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Stone's natural parents were deceased or unavailable and her adoptive parents were hostile in regard to this matter. Furthermore, once Stone was made a ward of the state, the Alabama Department of Pensions and Security could have pursued the child's rights; however, it did not. Finally, while Stone was a ward of the court, Judge Emmet, although convinced that the law regarding illegitimates was not right (and the Supreme Court of the United States so held in *Levy v. Louisiana* shortly thereafter), he, too, failed in his duty to protect the child's right by refusing to grant her guardian ad litem permission to appeal (see discussion, *infra*, "Error of Law").

<sup>14</sup> We have previously noted that this procedure was substantially what Stewart had suggested to Wesley Rose's attorney in 1962 as an alternative way to forever bar Stone from sharing in the copyright renewals.

father, Hiram 'Hank' Williams, . . . ; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate . . . ." That answer was prepared by Stewart, who at that time was aware that the *copyright laws allowed illegitimates to inherit*.

We cannot say that Smith's and Stewart's concealment did not affect the judgments ultimately rendered in the 1967 and 1968 proceedings, which denied Stone any right in her natural father's estate. While we recognize that the law in Alabama at that time was unfavorable to illegitimate children with regard to intestate succession from their *fathers*, we cannot say that Stone would not have prevailed upon appeal, because of the strong statements made in *Levy v. Louisiana*, which was extant at the time the appeal would have been pending had one been filed. In short, this Court very well could have reached the result it reached later in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), and could have recognized Stone's right, as the natural child of Hank Williams, to inherit from his estate. Because of the circumstances surrounding the 1967 and 1968 decrees, there are grounds for setting them aside, at least in part, for the reasons we shall hereinafter state.

#### Error of Law

At this time, we address another circumstance bearing on the validity of the 1967 and 1968 judgments. The record shows that after the trial court ruled against Stone in both proceedings, Hamilton, as her guardian ad litem, requested permission to appeal the rulings on her behalf.



Even though Judge Emmet thought the law was wrong, he denied Hamilton permission to appeal. After being denied the right to appeal, Hamilton did nothing further on her behalf.

Under the law as it exists today and as it was at the time of the proceedings in question, Stone, or her guardian ad litem acting on her behalf, had the right to appeal the trial court's adverse ruling to this Court. Title 7, § 754, Code of Alabama, 1940 (Recompiled 1958) (now, Code 1975, § 12-22-2) provided for appeals from the circuit court to the Supreme Court, as follows:

*"From any final judgment or decree of the circuit court, or courts of like jurisdiction, or probate court, except in such cases as are otherwise directed by law, an appeal lies to the supreme court, for the examination thereof as matter of right, on the application of either party, or his personal representative; and the clerk, register, or judge of probate, must certify the fact that such appeal was taken, and the time when, as part of the record, which gives the supreme court jurisdiction of the case."* (Emphasis added).

In addition, Tit. 7, § 786, Code of Alabama 1940 (Recompiled 1958), provided that "a guardian ad litem may take and prosecute an appeal without giving any security for costs of the appeal, and shall not be liable personally for costs of appeal."

In the present case, after the trial court refused to grant permission to appeal the adverse ruling, Hamilton understandably considered his representation of the child ended. The general rule is that "[a] guardian ad litem or next friend is always subject to the supervision and control of the court, and he may act only in accordance with

the instructions of the court." 43 C.J.S. *Infants* § 234, p. 610 (1978). Furthermore, at the time of these proceedings, this Court had construed Tit. 7, § 786, to hold that a guardian ad litem was *personally liable* for the costs of an appeal taken from a decree of the probate court, if the judgment of the lower court was affirmed. See *Ward v. Mathews*, 122 Ala. 188, 25 So. 50 (1898).

Because Stone was a ward of the court, it was the duty of the court, even though it had appointed a representative for Stone, to protect her rights and interests, on its own motion.<sup>15</sup> See 43 C.J.S. *Infants*, § 220, p. 564; see

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<sup>15</sup> We are aware that there are many settlements involving minors made in pending lawsuits, in which courts are called upon to make certain that such settlements are in the best interest of the minor. We further note that Alabama law has been especially sensitive with regard to the rule that any settlements made on behalf of minors be approved by the court. In *Large v. Hayes*, 534 So.2d 1101 (Ala. 1988), this Court recognized the role of the trial court in determining what is in the "best interest of the minor," as follows:

"This Court has recognized the special nature of an attempted settlement of a minor's claim. Before such a settlement can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor. . . .

" ' "The Court may, upon being advised of the facts, upon hearing the evidence, enter up a valid and binding judgment for the amount so attempted to be agreed upon, but this is not because of the agreement at all - that should exert no influence - but because it appears from

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also *Fletcher v. First Nat'l Bank of Opelika*, 244 Ala. 98, 11 So. 2d 854 (1943) (which recognized that a court of equity is the guardian of all infants within its jurisdiction). Therefore, there can be no question that the trial court's refusal to allow Stone to utilize her right to appeal constituted an error of law, especially when the judge's order that disallowed her claim stated on its face that he did not consider it to be in her best interest.

Code 1975, § 12-11-60, formerly Code 1940, Tit. 13, § 145, provides:

"(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof. . . .

"(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years."<sup>16</sup>

Under this section, an error of law is sufficient to warrant modification of the judgment rendered in the shadow of

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the evidence that the amount is just and fair, and a judgment therefor will be conservative of the minor's interests." "

*Large*, 534 So.2d at 1105 (citations omitted).

<sup>16</sup> The issues of statutes of limitations and laches, as they relate to this case, are treated in our discussion under the heading "Timeliness," *infra*.

that error, even in the absence of fraud. See *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 450, 74 So. 2d 608, 610-11 (1954).

Similarly, Rule 60(b)(6), Ala.R.Civ.P., provides that the court may relieve a party from the operation of a final judgment for any reason justifying such relief. An error of law, such as the one committed by the trial court in the 1967 and 1968 proceedings involving this estate, and that error's attendant consequences, would certainly appear to justify relief under this rule.

Therefore, even absent a finding that the judgments rendered against Stone in 1967 and 1968 were tainted by legal fraud, we would be compelled by the serious nature of the error committed by the trial court in those proceedings to revisit the judgments and modify their operation with respect to her rights, especially since the beneficiaries of those decrees and of the subsequent final settlement are the same individuals who were attempting to secure a judicial determination that would bar her right to share in copyright renewals. At the very least, this error of law aborted any res judicata effect of the 1967 and 1968 decrees.

#### Timeliness

Having found merit in Stone's claim that the 1967 and 1968 judgments rendered against her should be set aside, we now address whether her delay in asserting

that claim was reasonable.<sup>17</sup> Her claim, being equitable in nature, is governed by the doctrine of laches.

The doctrine of laches is purely equitable in nature and may be invoked to deny equitable relief to one guilty of unconscionable delay in asserting a claim. See *United States v. Olin Corp.*, 606 F.Supp. 1301, 1309 (N.D. Ala. 1985). However, this Court has recognized that the mere lapse of time alone does not establish laches. See *Davis v. Thomaston*, 420 So. 2d 82, 84 (Ala. 1982). Rather, the question of laches is one that must be decided upon the peculiar facts and circumstances of each case. See *Lindley v. Lindley*, 274 Ala. 570, 575, 150 So. 2d 746, 750 (1963); and *Jones v. Boothe*, 270 Ala. 420, 424, 119 So. 2d 203, 207 (1960). In *Multer v. Multer*, 280 Ala. 458, 462, 195 So. 2d 105, 109 (1966), this Court recognized that

“ [l]aches is not fixed by a hard and fast limit of time, but is a principle of good conscience dependent on the facts of each case.’ ”

(Quoting *Woods v. Sanders*, 247 Ala. 492, 496, 25 So.2d 141, 144 (1946)). In addition, this Court has held that a party will not be estopped from asserting a fact of which he was ignorant, if upon discovery of that fact, he promptly seeks relief. See *Duncan v. Johnson*, 338 So. 2d 1243, 1254 (Ala. 1976). Stated differently, the doctrine of laches will not apply in the absence of information and knowledge sufficient to put one on notice of a claim. *Id.*; see also *Sims v. Lewis*, 374 So. 2d 298, 305 (Ala. 1979); and *Cotney v.*

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<sup>17</sup> The reader should bear in mind that no issue has been raised as to the timeliness of Stone's paternity action below. Therefore, our discussion concerns only her action to have the prior judgments set aside on the basis of fraud.

*Eason*, 269 Ala. 354, 357, 113 So. 2d 512, 516 (1959). The law recognizes that for the doctrine of laches to apply, the party claiming the right must have failed to do something that equity would have required him to do. See *Olin Corp.*, 606 F.Supp. at 1309; and *Sims*, 374 So. 2d at 305.

In the present case, the estate of Hank Williams was not finally closed until August 1975. The record shows that only one year earlier, in 1974, was the truth of Stone's paternity first suggested to her, and, at that time, it appears to have been presented merely as theory or speculation. Before 1974, for personal reasons, Stone's adoptive parents had vowed that she never know the identity of her natural father, and it appears that they were successful in concealing this information from her. The record also shows that at the early age of three, Stone had been transferred from Montgomery, permanently, to an adoptive home in Mobile, which effectively removed her from any persons who might have known her identity. In addition, as previously discussed, the record is quite clear that the attorney and administratrix of the estate and others did all that they could, including committing legal fraud, to ensure that she never discover her identity or any facts material to her claim, and the record shows that the State of Alabama, acting through the Department of Pensions and Security, and the courts essentially contributed to the concealment of her parent-hood, although aware of it. Any public records, or documents that might have led to her discovery of her paternity at an earlier date had been ordered sealed by the court from the time that she was a small child. Upon retrieving these sealed documents in 1985, Stone promptly made a demand for her share, and the plaintiffs

instituted this action for a determination of her rights in view of the prior judgments.<sup>18</sup> Based on all of these considerations, we conclude that her attack on, and request for relief from, the prior judgments rendered in this matter are not time-barred.

### Intestate Succession and the Illegitimate Child

Having found that the judgments rendered against Stone in the 1967 and 1968 proceedings may be set aside

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<sup>18</sup> We also note that Williams, Jr., Acuff, and Rose are the parties who initiated the litigation from which this appeal arose, and who, themselves, sought a resolution of the matter of Stone's rights in the estate of Hank Williams.

In their complaint for declaratory judgment, Williams, Jr., Acuff, and Rose requested the following relief:

"2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiram 'Hank' Williams or the aforesaid copyright interest or renewals thereof.

"3. That in the event his Court alters, modifies or otherwise changes the prior Orders and Judgments in Actions No. 25,056 and 27,960 that this court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiram 'Hank' Williams and the copyright and renewal copyright interest of the musical compositions of Hiram 'Hank' Williams.

"4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."



with respect to her right to share in the estate, and, furthermore, having found that her claim to set aside those judgments is not time-barred, we hold that she presented evidence that she was entitled to a determination of her rights, and to reopen the estate, as she requested in her third-party complaint. Therefore, the trial court erred in entering summary judgment on her claim. Because the entire record is before this Court, even though an appeal was not taken from the other judgments, in the interest of judicial economy, we will now address those rights rather than remand the cause to the trial court.

The law concerning the right of an illegitimate child to inherit through intestate succession has seen many changes over the years. At common law, an illegitimate child, who had not been legitimated, was considered the child of no one and could inherit from no one. See *Williams v. Witherspoon*, 171 Ala. 559, 55 So. 132 (1911). The courts considered an illegitimate child "*nullius filius*," the "heir to nobody," and thus, the child "ha[d] no ancestor from whom any inheritable blood [could] be derived." *Lingen v. Lingen*, 45 Ala. 410, 413 (1871) (quoting 1 Wendell's Blackstone, 459).

By 1929, in the case of *Moore v. Terry*, 220 Ala. 47, 124 So. 80 (1929), overruled in part by *Everage v. Gibson*, *supra*, this Court had recognized that an illegitimate child, who had not been legitimated, could inherit from his mother, but not from his father, even if paternity was shown. This change was also reflected in Code 1940, Tit. 16, § 6, which provided that "[e]very illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like

manner as if born in lawful wedlock." Later, in *Hudson v. Reed*, 259 Ala. 340, 66 So. 2d 909 (1953), this Court described the common law rule as a "harsh rule," and held that an illegitimate child, because of this statute, could inherit not only *from* his mother but also *through* his mother.

Between 1929 and 1979, however, the law in Alabama recognized only the following two methods by which an illegitimate child could be legitimated in order to inherit from its father through intestate succession: 1) by marriage of the parents, accompanied by the father's recognition of the child; or 2) by a written declaration, attested by two witnesses, and filed with the judge of probate.<sup>19</sup>

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<sup>19</sup> It is quite possible that the 1952 custody and support agreement would have been sufficient to legitimate Stone if Stewart, the child's mother, or other parties, including the State of Alabama, had attempted to utilize this method. Code 1940, Tit. 27, § 11, in effect at the time of Stone's birth, provided specifically as follows:

"The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge or probate, and recorded in the minutes of his court, has the effect to legitimate such child."

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See *Moore*, 220 Ala. 47, 124 So. 80 (1929); see also Code 1923, §§ 9299, 9300, later codified at Code 1940, Tit. 27, §§ 10, 11, and Code 1975, §§ 26-11-1, 26-11-2.

Additionally, there were statutes in effect at the time of Stone's birth that provided that a father of an illegitimate child could be required to support the child, even though there had been no formal adjudication of paternity. See Code 1940, Tit. 34, §§ 89, 90. Under these provisions, a charge of nonsupport against the putative father could be sustained, even if he had not been adjudicated the father, if the putative father had publicly acknowledged or treated the child as his own in a manner to indicate his voluntary acknowledgement of parenthood. See *Law v. State*, 238 Ala. 428, 191 So. 803 (1939). These statutes evidence the policy of the law to compel the father of an illegitimate child to support that child if the father had *voluntarily acknowledged his parenthood*, as Hank Williams did here.<sup>20</sup>

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Normally, any agreement would have been filed before the father's death, but the statute was not so limited.

<sup>20</sup> We recognize that there is no Alabama case law on the issue of whether a purely contractual obligation to pay child support survives the death of the obligor; however, some jurisdictions, even at the time of Stone's birth, had held that death did not terminate a voluntary contractual obligation made by the decedent to pay child support, such as that made in the present case. We need not decide in this case whether a *court-ordered* obligation to pay child support survives the death of the obligor; however, we do hold that an agreement to pay child support, such as that involved in this case, that is purely

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After the United States Supreme Court decided the cases of *Trimble v. Gordon*, 430 U.S. 762 (1977), and *Lalli v. Lalli*, 439 U.S. 259 (1978),<sup>21</sup> Alabama's law concerning the right of an illegitimate child to inherit from its father changed dramatically. In *Trimble*, 430 U.S. 762 (1977), the Court found an Illinois statute, much like Alabama's Code 1975, §§ 26-11-1 and 26-11-2, which set forth the

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contractual and voluntarily entered without judicial compulsion, does not lose its enforceability at the death of the obligor, unless otherwise expressed.

We note, in particular, the following cases:

1) *In re Cirillo's Estate*, 114 N.Y.S.2d 799 (Queens Sur. 1952), in which the court, settling an account against the estate of the deceased, held that while generally a child support obligation ends with the death of the parent, the deceased's agreement to make support payments as long as his responsibility for the support of the illegitimate child existed under the law indicated that he intended to bind his estate beyond his death; and

2) *Stumpf's Appeal*, 116 Pa. 33, 8 A. 866 (1887), in which the court reversed a judgment disallowing the plaintiff's claim against the putative father's estate and held that there was nothing in the support agreement to indicate an intention by the obligor to limit his obligation to support his illegitimate child to his lifetime only and that the evidence showed that the purpose of the agreement was to save the mother from the expenses of rearing the child, and thus, the contract was continuing and binding on the decedent's estate.

See also, Annot., *Validity and Construction of Putative Father's Promise to Support or Provide for Illegitimate Child*, 20 A.L.R. 3d 500, 540 (1968).

<sup>21</sup> Of course, the rights of illegitimates to equal protection had been decided in *Levy v. Louisiana* in 1968.

two methods of legitimation discussed above, to be unconstitutional under an equal protection challenge. The Court stated the following:

" 'The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual - as well as an unjust - way of deterring the parent.' "

*Trimble*, 430 U.S. at 769 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)). In *Lalli*, 439 U.S. 259 (1978), the United States Supreme Court upheld, as constitutional, a similar New York statute because it provided that an illegitimate child could inherit from its father if there had been a judicial determination of paternity before the father's death.

In *Lalli*, Mr. Justice Powell, while recognizing, however, the importance of the competing state interest in the just and orderly administration of decedents' estates, stated as follows:

"The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death. We long have recognized that this is an area with which the States have an interest of considerable magnitude. *Trimble*, [430 U.S. 762 (1977)] at 771; *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. at 170; *Labine v. Vincent*, 401 U.S. at

538; see also *Lyeth v. Joey*, 305 U.S. 188, 193 (1938); *Merger v. Grima*, 8 How. 490, 493 (1850).

"This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed: '[T]he birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove.' *In re Ortiz*, 60 Misc.2d 756, 761, 303 N.Y.S.2d 806, 812 (1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. 'The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know who is responsible for her pregnancy.' *Ibid.* . . . ; accord, *In re Flemm*, 85 Misc.2d 855, 861, 382 N.Y.S.2d 573, 576-577 (Surr.Ct. 1975); *In re Hendrix*, 68 Misc.2d, at 443, 326 N.Y.S.2d, at 650; cf. *Trimble*, *supra*, at 770, 772."

439 U.S. at 268-69 ("who" emphasized in original; other emphasis added).

Further, Mr. Justice Powell quoted extensively from *In re Flemm*, 86 Misc.2d 855, 381 N.Y.S.2d 573 (N.Y. Sur. 1975), as follows:

" 'An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent . . . . And, in probating the will of his parent (though not named a beneficiary) or in

probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of great concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogates' Courts since title to real property passes under such decree. Our procedural statutes and Due Process Clause mandate notice and opportunity to be heard to all necessary parties. *Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates.* The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many – some members suggested a majority – of estates.' 85 Misc. 2d, at 859, 381 N.Y.S.2d, at 575-576."

439 U.S. at 270 (emphasis added).

Recognizing a different view in *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983), the United States Supreme Court, in holding a Tennessee statute of limitations involving illegitimate children unconstitutional, stated:

*"In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny. Although*



we have held that classifications based on illegitimacy are not 'suspect,' or subject to 'our most exacting scrutiny,' *Trimble v. Gordon*, [430 U.S. 762 (1977)], at 767; *Mathews v. Lucas*, 427 U.S., at 506, the scrutiny applied to them 'is not a toothless one. . . .' *Id.*, at 510. In *United States v. Clark*, [445 U.S. 23 (1980)], we stated that 'a classification based on illegitimacy is unconstitutional unless it bears "an evident and substantial relation to the particular . . . interest [the] statute is designed to serve."' 445 U.S., at 27. See also *Lalli v. Lalli*, [439 U.S. 259 (1978)], at 265 (plurality opinion) ('classifications based on illegitimacy . . . are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests'). We applied a similar standard of review to a classification based on illegitimacy last Term in *Mills v. Habluetzel*, 456 U.S. 91 (1982). We stated that restrictions on support suits by illegitimate children 'will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest.' *Id.*, at 99.

"Our decisions in *Gomez* [*v. Perez*, 409 U.S. 535 (1973)] and *Mills* are particularly relevant to a determination of the validity of the limitations period at issue in this case. In *Gomez* we considered 'whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children.' 409 U.S., at 535. We stated that 'a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally,' *id.*, at 538, and held that 'once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a

child simply because its natural father has not married its mother.' Ibid. *The Court acknowledged the 'lurking problems with respect to proof of paternity,'* *ibid.*, and suggested that they could not 'be lightly brushed aside.' Ibid. But those problems could not be used to form 'an impenetrable barrier that works to shield otherwise invidious discrimination.' Ibid." (Emphasis added.)

462 U.S. at 8-9.

Consequently, in 1979, this Court, in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), in order to avoid finding Alabama's statutory scheme for intestate succession unconstitutional, construed it to include a third method of legitimation, i.e., a judicial determination of paternity made within two years of birth and during the father's lifetime. The *Everage* Court gleaned this third method from the child support statutes found at Code 1975, § 26-12-1 et seq. In 1982, the Alabama legislature superseded *Everage* and wrote this procedure into the Probate Code itself, in § 43-8-48, which provides that an illegitimate child is considered to be the child of the father if the parents marry or if paternity is established by an adjudication before the death of the father or *thereafter by clear and convincing proof*.<sup>22</sup> Then, in addition, in 1984, the

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<sup>22</sup> While not at issue in the present case, it is worth noting that the comments to this section expressly state that there is no time limitation in which to bring an action for paternity under this section because the drafters had serious reservations about the constitutionality of the former two-year limitations period adopted in *Everage*, and rightfully so. See *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985) (which recognized that the two-year limitations period in *Everage* was unconstitutional).

legislature repealed Code 1975, § 26-12-1 et seq., and replaced those sections with the Alabama Uniform Parentage Act, found at Code 1975, § 26-17-1 et seq. Like the child support statutes it replaced, the AUPA sets forth a mechanism whereby a judicial determination of paternity can be made. Therefore, there are presently two statutory schemes for judicial determination of paternity, one in the Probate Code and one in the AUPA.

Under the law as it exists today, there can be no question that where, as in this case, paternity has been established by clear and convincing evidence,<sup>23</sup> the law

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<sup>23</sup> For the purpose of clarity, we briefly recap the evidence that compelled the trial court's finding of paternity that is now undisputed in this case: 1) the 1952 custody and support agreement, that was drafted by Williams's attorney, refers to Hank Williams throughout as the "father" of the child; 2) the 1952 agreement, itself, requires a relinquishment by the mother of virtually all rights in the child to Hank Williams; 3) the 1952 agreement provided that the mother be given a one-way plane ticket to California, and that the child live with Lillian Stone, Williams's mother, for two years, during which time he would fully support the child; 4) the 1952 agreement provided that at the age of 3, the child "was to live with him [Hank Williams] continuously and be wholly and completely supported for by him, and cared for by him" (it is interesting to note that at the time this agreement was drafted, Williams, Jr., did not live with his father, but rather, lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams attempted to provide the opportunity for closer parent-child relationship with Stone, who was to live with him, than that being enjoyed by his other child); 5) Lillian Stone, Irene Smith, and other family members acknowledged and publicly held the child out as the daughter of Hank Williams; and 6) the records of the Montgomery County Department of Public

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recognizes the right of the child to inherit through intestate succession. In brief response to the argument that Stone is barred from establishing her rights in the estate by operation of the doctrines of res judicata and collateral estoppel, we note the following. First, with regard to the issue of Stone's paternity, it is clear from the record that this issue was not adjudicated in the 1967 and 1968 proceedings. The court stated that it "[did] not believe that it [was] necessary to make this . . . determination." Furthermore, the issue of Stone's paternity was not appealed to this Court, and therefore, no arguments concerning the issue of her paternity are material. Finally, as for the issues regarding Stone's rights that were adjudicated in the 1967 and 1968 proceedings, the fact that those determinations were influenced by legal fraud on the court renders the doctrines of res judicata and collateral estoppel inapplicable, especially in this case, which involves the illegitimate child's right to share in the proceeds of copyright renewals that admittedly would have been payable to her as an illegitimate had her paternity not been concealed. See Code 1975, § 43-8-48; and *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986). We recognize that the law at the time of her father's death had not yet recognized the third method of legitimation for the purpose of

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Welfare repeatedly document that Stone's natural father was Hank Williams. Therefore, unlike many cases in which the alleged father denies paternity and wishes to have nothing to do with the child, this is a case in which the father not only wished to accept responsibility for the child, but convinced the mother to give the child up, so that it might live with him and be reared by him.

intestate succession, i.e., a judicial determination of paternity; however, we also recognize that the law as it existed at that time has since been found to be unconstitutional by the United States Supreme Court in *Trimble v. Gordon*, 430 U.S. 762 (1977), and by this Court in *Everage v. Gibson*, 372 So.2d 829 (Ala. 1979).

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it exists at the time the appeal is heard. This situation has been addressed by this Court and the Court of Civil Appeals in the cases of *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986); *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985); and *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986).

In *Cotton*, 495 So. 2d 1077 (Ala. 1986), an illegitimate child brought an action to establish paternity under Code 1975, § 43-8-48(2)(b), 11 years after the death of the alleged father. In construing § 43-8-48(2)(b), this Court held:

"It may be seen from the plain language of the statute that paternity of an illegitimate child may be established *after the death of the father* through an adjudication supported by clear and convincing evidence. *When so established, such a child may inherit from the father through intestate succession.*" (Second emphasis added.)

*Cotton*, 495 So. 2d at 1079. In *Cotton*, as in the present case, there was clear evidence that the alleged father recognized the child as his and held himself out as the child's father. Yet, in *Cotton*, as in the present case, the law at the time of the alleged father's death would not have recognized the child as an heir. Even so, this Court

did not apply an unconstitutional law to the parties, but, rather, applied the law as it existed at the time of the appeal. Also, in *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985), an illegitimate child brought a paternity action before the death of the father, but after the expiration of the two-year limitations period that had been adopted in *Everage*, 372 So. 2d 829 (Ala. 1979). However, this Court refused to apply the two-year limitations period because it had since been found to be unconstitutional. Instead, it applied the law as it existed at the time of the appeal, and found the action not time-barred. Again, in *Free v. Free*, 507 So. 2d 930 (Ala. Civ. App. 1986), an illegitimate child brought an action under § 43-8-48(2)(b), not only after the death of the father, but also 20 years after the child had reached the age of majority. Despite the arguments by the legitimate heirs, the Court of Civil Appeals refused to apply the law in effect at the time of the death of the father or at the time of the birth of the child because that law had since been found unconstitutional.<sup>24</sup>

To the extent that there remains a question of the effect of a subsequent adoption on the right to establish paternity, we address that issue briefly. Code 1975, § 43-8-48(1), part of the Probate Code, states:

"An adopted person is the child of an adopting parent and not of the natural parents . . . ."

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<sup>24</sup> While the paternity action is not an issue in the present case, it is interesting to note that Stone brought this action to set aside the former judgments and to declare her rights in her natural father's estate within 11 years after reaching the age of majority, which compares favorably with the delay in *Cotton*, 495 So. 2d 1077 (Ala. 1986), and *Free*, 507 So. 2d 930 (Ala. Civ. App. 1986).

In addition, Code 1975, § 26-17-6(e), part of the Alabama Uniform Parentage Act, provides:

"If the child has been adopted, an action [to establish paternity under this section] may not be brought."

The trial court in the 1968 proceedings was erroneously of the opinion that the fact that Stone had twice been adopted acted as a bar to her recovery under the predecessors to these statutes. The crucial fact that the trial court failed to recognize in this case was that Stone had not been adopted at the time of her natural father's death. Therefore, any right that she had to inherit from his estate would have vested *at the time of his death* and would not have been affected by her subsequent adoption some two years later.

We do not believe that, in drafting these statutes, the legislature intended to cut off the right of an "after-adopted" child to inherit from its natural parent's estate.<sup>25</sup> Construing these statutes liberally, in order to further the trend of ameliorating the "harsh rule" of the common law, which had been overturned in 1968 by the United States Supreme Court, and which had been criticized by this Court and by the trial court in 1968, we believe that these statutes are to be read to protect, rather than cut off, an "after-adopted" child's right to inherit

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<sup>25</sup> In fact, in 1954, at the time of Stone's adoption, Alabama's law provided specifically that "[n]othing in this chapter dealing with adoption shall be construed as debarring a legally adopted child from inheriting property from *its natural parent or other kin*." Code 1940, Tit. 27, § 5. (Emphasis added.)



from its natural parents. We hold, therefore, that because Stone had not been adopted at the time of her natural father's death, her rights in his estate had already vested, and, therefore, these statutes do not apply.<sup>26</sup>

### Relief Granted

We have noted throughout this opinion the unique character of this case. In fashioning an appropriate remedy, we again take these peculiar circumstances into consideration.

This Court is ever mindful of the policy concerns surrounding the finality of judgments. At the same time, we cannot ignore the pleas for relief of an innocent party who has labored under judgments procured by legal fraud and suppression, and based upon a completely erroneous view of the applicable law, at a time when she was not only a minor but had no one except a guardian ad litem fighting for her rights, and he was effectively foreclosed from establishing them.

We further recognize that when an illegitimate child and a decedent's estate are involved, as is the case here, the law must protect two additional state interests – the right of the illegitimate child to inherit on a par with any legitimate children, and the important state interest in the just and orderly disposition of the decedent's estate.

We also recognize that

“ ‘where the rights and obligations of the parties are necessarily blended in the judgment, and are

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<sup>26</sup> It should be apparent that the time lapse approved in this case may not be approved in other factual settings.

thus dependent one upon the other, though they be not strictly joint, the appellate court will render such judgment as will permit and require the entire controversy to be settled in one proceeding, in which the rights and liabilities of all parties may be considered and consistently determined.' "

*City of Tuscaloosa v. Fair*, 232 Ala. 129, 136-37, 167 So. 276, 282 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So.2d 121 (1958) (quoting *North Alabama Traction Co. v. Hays*, 184 Ala. 592, 596 64 So. 39, 40 (1913)). In view of all of the evidence in this case relating to concealment by the attorney and the administratrix of the estate of Stone's claims to the estate and of facts material to those claims, in addition to the fact that the state agencies involved, as well as the court itself, failed to protect her rights, we cannot but conclude that equity and justice require that the 1967 and 1968 decrees rendered in this matter be set aside, in part. Accordingly, in order to balance all of the equities involved in this case, we hereby reverse the summary judgment on Stone's third-party claim in which she asked that the estate be reopened, and we order that the 1967 and 1968 judgments rendered in this matter be set aside, in part, and that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only, from the date that she gave notice of her claim, August 5, 1985. The trial court's judgment which, insofar as it denied her request for punitive damages against the third-party defendants, is affirmed.

While we find that the third-party defendants' sureties, Gulf American and American States, are not liable on Stone's fraud claim, their contractual liability arising out of the surety bond issued for this estate is a matter that remains to be determined by the trial court on remand.

The judgment of the trial court, insofar as it denied Stone's first claim for relief, is reversed, and this cause remanded for a full hearing and settlement, in a manner consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Hornsby, C.J., and Jones, Adams, and Steagall, JJ., concur.

Almon and Shores, JJ., dissent.

Houston and Kennedy, JJ., recused.

*Catherine Yvonne Stone v. Gulf American Fire and Casualty Co., et al.*

SHORES, JUSTICE (dissenting).

While I share my brothers' sympathy for the appellant, I cannot overlook the fact that every rule of law extant at every critical time in her life is against her position. Illegitimates could not inherit from their fathers at the time her father died (1953). They could not inherit at the time his estate was litigated in 1967 and 1968 when the Circuit Court of Montgomery County entered its final judgments to that effect. No appeal was taken from those final judgments.

The majority suggests that this Court might have changed the law had the guardian ad litem appealed the

1968 judgment. That assumption is speculation at best, but to give the appellant the benefit of that guess all of these years later is unprecedented.

The majority permits the appellant to challenge final judgments after approximately 17 years and more than 11 years after she reached majority in 1974, and would permit her to reopen the estate of her father, dead now for more than 36 years. All of this is permitted more than a decade and a half after a guardian ad litem appointed to represent her interests<sup>1</sup> apparently concluded that he had discharged the duties of his office.

When are judgments final? The majority does not say. It attempts to temper its assault on the finality of these judgments by permitting the appellant to share in only a part of the decedent's estate: royalties paid since August 5, 1985, forward. Apparently, then, even the majority is unprepared to give the appellant full status as an heir to Hank Williams's estate. Apparently, she takes no interest in any real estate he may have had. She is allowed to participate in royalties payable only after August 5, 1985. Presumably, had Hank Williams's estate consisted of liquidated assets only, she could not have prevailed. I have never before heard of one's legal status as an heir turning on the nature of the assets of the estate. Not surprisingly, the majority cites no authority for its holding.

Because I feel bound to apply the law to these facts, sad though they are, I am compelled to dissent.

Almon, J., concurs.

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## APPENDIX B

IN THE CIRCUIT COURT FOR THE  
FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS,  
and WESLEY H. ROSE and  
ROY ACUFF, as TRUSTEES  
in LIQUIDATION for  
STOCKHOLDERS of FRED  
ROSE MUSIC, INC., both  
TENNESSEE CORPORATIONS,

PLAINTIFFS,

**VS.**

CATHERINE YVONNE STONE,  
DEFENDANT.

CATHERINE YVONNE STONE,  
COUNTER-CLAIMANT,

VS.

RANDALL HANK WILLIAMS,  
COUNTER-DEFENDANT.

CATHERINE YVONNE STONE,  
THIRD PARTY PLAINTIFF,

VS.

GULF AMERICAN FIRE &  
CASUALTY COMPANY;  
AMERICAN STATES INSURANCE  
COMPANY; JONES, MURRAY &  
STEWART, P.C.; IRENE SMITH;  
THE ESTATE OF ROBERT B.  
STEWART; et al.

### THIRD PARTY DEFENDANTS.\*

CIVIL ACTION  
NO. 85-1316-K

FINAL ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT

This Cause comes before this Court upon an Action for Declaratory Judgment filed by Randall Hank Williams (hereinafter referred to as Williams, Jr.), Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc. against Catherine Yvonne Stone (hereinafter referred to as Stone), as Defendant.

The Complaint as amended seeks to have the Court declare that Stone has no entitlement to any proceeds or royalties from the Estate of Hiram "Hank" Williams (hereinafter referred to as Williams, Sr.), that, as an adopted child she is barred from attempting to establish that she is a child of Williams, [sic] Sr. and that Williams, Jr. is the sole child of Williams Sr. and that Stone has never been adjudicated, under the laws of the State of Alabama, to be the Child of Williams, Sr. The Complaint further seeks to have the Court determine that Stone is barred from now attempting to establish that she is a child of Williams, Sr. by the applicable statute of limitations, the doctrine of laches, waiver and estoppel, and, because of this Court's previous judgments and orders. Finally, Plaintiffs pray that this Court will declare that Williams, Jr. is the sole child and sole heir of Williams, Sr., and thus is the sole person with rights in and to the Estate of Williams, Sr., including, but not limited to, rights in musical compositions, recordings, copyrights, use of the name and likeness of Williams, Sr., and all other tangible and intangible rights deriving from Williams, Sr.'s estate.

Simultaneously with the answer filed by Stone, a counterclaim was filed against Williams Jr. on October 14, 1986. In said counterclaim, Stone alleges that she is the natural daughter of Williams, Sr. and as such is entitled to one-half of the proceeds of his estate. She prays for the entry of judgment that establishes her paternity, and awards her her proportionate interest in the proceeds of the Williams, Sr. estate. She requests that a constructive or resulting trust on all monies derived by Williams, Jr. from the estate of Williams, Sr. be imposed.

Subsequent to her counterclaim, Stone filed on October 24, 1986, a third party complaint against Gulf American Fire and Casualty Company (hereinafter referred to as Gulf American), American States Insurance Company (hereinafter referred to as American States), Jones, Murray & Stewart, P.C., Irene Smith, and the Estate of Robert B. Stewart. The third party complaint alleges that there was an intentional, willful and fraudulent concealment from the Court from 1953 through 1967 of Stone's identity and claim as a natural child of Williams, Sr. It further states that there was a conspiracy to defraud the Court and Stone by purposefully concealing pertinent information and theories that would presumably have entitled Stone to a share in the proceeds of the Williams, Sr. estate. Stone files a claim for relief against the sureties for payment on the surety bond issued by Gulf American and its successor American States on the administrator's bond issued in connection with the estate of Williams, Sr. Pursuant to the third party complaint, Stone requests that the estate be reopened and all previous orders of the Court affecting her status be declared null and void, that she be



allowed to share in a proportionate interest in the Williams, Sr. estate and that she recover general and punitive damages against all third party defendants.

At the present time, four motions for summary judgment are presently pending before the Court on behalf of the following:

1. Williams, Jr., Wesley Rose and Roy Acuff,
2. Irene Smith,
3. Jones, Murray & Stewart, P.C. and
4. Gulf American and American States.

By Order of the Court, pursuant to an agreement of the parties, the Estate of Robert B. Stewart was dismissed on April 3, 1987.

The Court has reviewed the various motions submitted along with the arguments and briefs of learned counsel and is now of the opinion that the Court has jurisdiction over the parties and of the causes of action. Pursuant thereto, the Court does hereby proceed to enter this its final order on all motions for summary judgment.

For the purposes of this order, the Court makes the following findings of fact which, in its opinion, are not in dispute.

On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

After the birth of said child, both parties agree that it shall be placed with Mrs. W.W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting its mother.

In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

William, Sr. died intestate on January 1, 1953.

Lillian Williams Stone filed for letters of administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

Billie Jean Jones, "who states she is the widow",  
Randall Hank Williams, Jr.,  
Mrs. Irene Williams Smith, a sister  
Elonzo H. Williams, father and  
Lillian S. Stone, mother.

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams, Sr./Jett agreement several months earlier.

Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

On or about January 28, 1953, Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father.

The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. At that time an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell Jett (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959 Stone was again adopted. Thus, a second adoptive/parent child

relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads:

D. CATHERINE YVONNE STONE - From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.

In response, Stewart wrote in pertinent part:

None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be

faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

- a. consider that by the adoption all rights under the renewal statute have been lost.
- b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.
- c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with the understanding of the facts by the court.

It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr. then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. It was in those answers that the question of existence of the legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

In 1967 and 1968 Stone lived in Mobile with her adoptive parents Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the



matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued:

We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from the Hank Williams compositions. . . .

The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. In the Order the court found as follows:

The principle issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been

legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination (emphasis added).*

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .

IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:

. . . .2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. In that order, the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

The Court is impressed with the argument of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimate off-spring should be afforded adequate property rights. The Common law is severe in calling such off-spring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been . . . adopted. . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

. . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

. . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiram (Hank) Williams within the meaning of the Copyright Law.

Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama law.

Following the death of Williams, Sr., Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in

interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams, Sr.

It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." In April of 1974, Stewart advised counsel for Williams, Jr. that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's "ancestry may well be reasonably obvious to her, and further trouble may ensue."

The Estate of Williams, Sr. would be closed in August of 1975 without further incident relative to the issue of Stone's rights, if any, to a share in said estate.

In January of 1974, Cathy Stone reached the age of majority. While attending the University of Alabama, she was informed by her adoptive mother that Williams, Sr. might be her father. Stone was also advised that the Circuit Court of Montgomery County was holding certain funds for her from the estate of Lillian Stone. Stone traveled to Montgomery and received the proceeds from the estate of her former adoptive mother. It appears from

the record that it was at about this time that Stone began to seriously seek information concerning her parentage.

From 1976 to 1979 Stone had several encounters with individuals that had knowledge surrounding her earlier years. It appears from [sic] the record that Stone had formed an opinion as to her parentage as early as the Fall of 1979. Stone continued to retrieve documents that bore on the issue throughout the period of 1979 through 1980.

On July 1, 1985 Stone filed an action in the Circuit Court of Montgomery County requesting that certain documents that had been placed under seal be released to her. On August 5, 1985 Stone wrote a demand letter to Williams Jr. and Acuff-Rose/Opryland advising them of Stone's claimed interest in Williams' copyrights. On September 12, 1985, Stone filed an action in the United States District Court for the Southern District of New York, Civil Action No. 85. Civ. 7133 JFK, relative to her alleged rights in the copyrights of musical compositions written in whole or in part by Williams, Sr.

The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counter claim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.

The issues raised by the motions for summary judgment presently before the Court are as follows:

Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.

Whether, consistent with prior orders and judgments of this Court, Williams, Jr. is the sole heir of the Williams, Sr. estate and as such has exclusive rights to all proceeds generated in the past by the estate and in the future from copyrighted materials.

Whether Stone has ever been adjudicated to be a child of Williams, Sr.

Whether, based upon the facts not now in Dispute, the third party complaint states a cause of action upon which relief may be granted.

It is obvious from the record that if Stone is in fact the child of Williams, Sr. she is an illegitimate child who was subsequently twice adopted. It is also obvious from the record that Williams, Sr. died intestate. The issue that naturally arises is what rights an after-adopted illegitimate child has to assert a claim against her reputed biological father's estate.

The answer to that question within the context of this case appears to be none. The issue that inevitably follows that determination is what remedies are available to an illegitimate under Alabama law to establish paternity so as to have a bona fide claim to the proceeds of the intestate father's estate.

Presently, there are four ways in the State of Alabama to legitimate a child so that the child can inherit from an intestate father. Two of the methods require either the

marriage of the father and mother and recognition by the father of the child as his own or the filing of a formal written declaration attested by two witnesses. The third method relates to the procedure under the Alabama Uniform Parentage Act (hereinafter referred to as AUPA) which is codified in Section 26-12-1, *et. seq.*, Code of Alabama 1975 as amended. Finally, the fourth alternative is found in the Alabama Probate Code at Section 43-8-48 Code of Alabama 1975 as amended.

The Court is of the opinion that as to the Plaintiffs' claim and as to Stone's counterclaim, the above cited procedures that are presently available are the ones that shall be determinative of the issues that relate to them.

It is undisputed that neither of the first two procedures is applicable in this case. Williams, Sr. died prior to Stone's birth, he never married Stone's mother, and no formal declaration of paternity that met statutory requirements was ever filed.

The fact that Stone was twice adopted after birth acts as a bar to recovery under the AUPA, specifically Section 26-17-6-(e), *supra*. That section clearly provides that an adopted child may not bring an action to establish paternity under the Act.

In addition, the fact that Stone was twice adopted forecloses recovery under the Alabama Probate Code, Section 43-8-48, *supra*. That section clearly provides that an adopted person is the child of an adopting parent and not of the natural parents. Stone argues that the fact that she was unadopted at the time of Williams, Sr.'s death would remove her from the applicability of Section 43-8-48. The Court disagrees. At the time of Williams,



Sr.'s death there did not exist a legal relationship between Stone and Williams, Sr. that would entitle her to inherit. If that were the case, Section 43-8-48 would not even be applicable since that section becomes important only if one is attempting to establish that such a relationship does in fact exist.

Assuming arguendo that the Court determined that it should apply the law as it existed at the time of Stone's birth to the issues in this case, the Court is of the opinion that Stone would still be barred from recovery in her counterclaim. To prevail, Stone must establish the existence of a relationship between herself and Williams, Sr. that would allow her to have a valid claim against his estate. Because of the factual circumstances that exist, that becomes an impossibility irrespective of whether the Court applies existing law or the law of 1952.

The 1967 proceedings in the Circuit Court of Montgomery County involved the question of whether or not Stone was an heir of Williams, Sr. At that time, an illegitimate child could not inherit from its natural father unless the child had been legitimated. As Stone had not been legitimated [sic], the Court held that Stone was not an heir and as a result not entitled to share in the estate. Although the law today differs from relevant applicable standards in 1967, the doctrines of res judicata and collateral estoppel nonetheless now preclude Stone's claim to a share in the William's, Sr. estate. Since the issue and claim by Stone that she is an heir and entitled to inherit was decided in the 1967 proceeding in which the parties were the same, she is thus barred from relitigating that identical issue and claim in this case.

Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of William's Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and William's, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, *res judicata* and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments purportedly [sic] occurred, full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint

does not state a cause of action for which recovery can be had.

It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is GRANTED as to all issues.

The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 A.M.

DONE THIS THE 14th DAY OF JULY, 1987.

/s/ H. MARK KENNEDY  
H. MARK KENNEDY  
CIRCUIT JUDGE

Sterling Culpepper  
David Johnson  
Robert Black  
James Hampton  
Christian Horsnell  
Richard Frank, Jr.  
James E. Williams  
F. Keith Adkinson  
James A. Goodman/Vincent H. Chieffo  
Alan Shulman  
Stephen K. Rush  
Thomas Levy

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APPENDIX B-2

IN THE CIRCUIT COURT FOR THE  
FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS,	)	
and WESLEY H. ROSE and	)	
ROY ACUFF, as Trustees	)	
in Liquidation for	)	
Stockholders of Fred Rose Music,	)	CASE NO.
Inc., and Milene Music, Inc.,	)	CV-85-1316-K
both Tennessee Corporations,	)	
PLAINTIFFS,	)	
vs.	)	
CATHERINE YVONNE STONE,	)	
DEFENDANT.	)	

FINAL ORDER

This Cause now comes before this Court for Final Disposition pursuant to previous Orders and proceedings in this matter. Before the Court at this time are all forms of evidentiary matters, the pleadings as filed and post-trial briefs that have been submitted by learned counsel.

The Court on the date of the last hearing took under advisement certain offerings of evidence. The Court will now rule on the admissibility of those items and on any and all outstanding posttrial motions before proceeding to the merits of the remaining issue.

The following exhibits have been offered into evidence, objected to, and are pending admission by the Court:

B-2.2

Defendant's Exhibits 1, 5, 13, 14, 16, 17, 33, 35 & 41.

Upon review of the exhibits as outlined above, the Court does hereby sustain the objections to proffered exhibits nos. 1, 5, 13, 14, 16 and 17.

Upon review of the exhibits as outlined above, the Court does hereby overrule the objections to proffered exhibits nos. 33, 35 and 41 and the same are hereby admitted into evidence.

On October 7, 1987 Defendant filed a Motion to Strike the Posttrial Brief of Plaintiff. That Motion is Denied.

Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the Court reiterates that the issue that remains before the Court is the biological status of Defendant Stone. The Court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the Court is of the Opinion that it continues to have jurisdiction over the parties and of the subject matter and does hereby enter the following Final Order.

The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Willimas [sic], Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr.

DONE THIS THE 26TH DAY OF OCTOBER, 1987

/s/ H. Mark Kennedy  
H. MARK KENNEDY  
CIRCUIT JUDGE

Honorable Sterling Culpepper

Honorable David Johnson

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APPENDIX C-1

*Stone v. Gulf American Fire & Cas. Co., et al.*

On Application for Rehearing

(Released Nov. 9, 1989)

MADDOX, JUSTICE.

Both Irene Smith and Jones, Murray and Stewart, P.C., have asked this Court to clarify its original opinion and to state that the summary judgments granted to them insofar as they denied Stone's request for damages against them are affirmed. Stone has again requested (1) that this Court reverse the trial court's summary judgment on her fraud claims against third-party defendants Smith and Jones, Murray and Stewart, and (2) that this Court modify its opinion to allow her to share in the estate of Hank Williams, Sr., from the date of his death in 1953, rather than from the date on which she made a demand on Hank Williams, Jr., in 1985.

In a brief styled "Petition of Randall Hank Williams for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings," Williams, Jr., asks this Court to vacate and modify its original opinion on the ground that he was not a party to the appeal, and, therefore, that his due process rights were violated. Williams, Jr., argues that because Stone appealed only from the summary judgment granted on her third-party claim, she is barred by the doctrine of *res judicata*, because she did not appeal the summary judgment granted to him on his claim that she was not an

"heir." In short, Williams, Jr., claims that even though Stone has shown that she is the natural child of Hank Williams, Sr., and even if that determination in her favor was not appealed by him, she is now barred from inheriting because she did not appeal the adverse determination by the trial court that she was not an "heir," even though she has been judicially determined to be a natural child.

As set forth in the our [sic] original opinion, Williams, Jr., initiated this action by filing a declaratory judgment action seeking a declaration that Stone had no entitlement to Hank Williams's estate. Stone filed a counterclaim against Williams, Jr., and alleged that she was the natural daughter of Williams, Sr. Williams, Jr., joined issue on that claim.

Stone later filed a third-party complaint against Smith; Jones, Murray and Stewart, P.C.; and several fictitiously named parties, asking that the estate be reopened; she also asked for compensatory and punitive damages against third-party defendants Smith and Jones, Murray and Stewart, P.C. Gulf American Fire & Casualty Company and American States Insurance Company were also named as third-party defendants. The trial court entered a "Partial Summary Judgment" for Williams, Jr., on his complaint and entered a "Partial Summary Judgment" against Stone on her counterclaim and on her third-party complaint, finding "that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. . . . [and that] [t]his issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even

though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings."

As the trial court stated in its order on October 26, 1987, Williams, Jr., throughout the proceedings, subsequent to the time when the court entered its "Partial Summary Judgment" on July 14, 1987, objected to the trial court's proceeding forward to determine Stone's paternity, and excepted to the Court's interpretation of the pleadings.<sup>1</sup>

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<sup>1</sup> For a better understanding of the legal effect of the trial court's grant of "Partial Summary Judgment" and the continuance of the case for a determination of Stone's paternity, over the objection of Williams, Jr., we set out portions of the trial court's orders:

"The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counterclaim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.

"The issues raised by the motions for summary judgment presently before this Court are as follows:

"Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.

"Whether Stone has ever been adjudicated to be a child of Hank Williams, Sr.

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"Whether, based upon the facts not now in dispute, the third party complaint states a cause of action upon which relief may be granted.

"\* \* \* \*

"Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of Williams, Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and Williams, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

"As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged

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fraudulent concealment purportedly occurred, a full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint does not state a cause of action for which recovery can be had.

"It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

"Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is granted as to all issues.

"The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

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"Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 a.m.

"DONE THIS THE 14TH DAY OF JULY, 1987.

"s/H. MARK KENNEDY

"CIRCUIT JUDGE"

On October 26, 1987, the trial judge entered a final judgment in the case, which held inter alia:

"Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the court reiterates that the issue that remains before the court is the biological status of Defendant Stone. The court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

"In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the court is of the opinion that it continues to have jurisdiction over the parties and of the subject matter and does hereby enter the Final Order.

"The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Williams, Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr."

Stone admittedly did not appeal the entry of the "Partial Summary Judgment"<sup>2</sup> entered in favor of Williams, Jr., on his complaint, and on Stone's counterclaim on July 14, 1987, likewise, Williams, Jr., did not appeal the adverse ruling that Stone was the natural child of Hank Williams, Sr., that was entered on October 26, 1987. Naturally, Stone did not appeal from the October 26, 1987, determination that she was the natural child of Williams, Sr., because it was favorable to her.

It is clear that the doctrine of *res judicata* does not apply in this situation, because that doctrine prohibits the *relitigation* of all matters that were or could have been litigated in a *prior* action. *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n*, 401 So. 2d 764, 768 (Ala. 1981). Here, the complaint of Williams, Jr., and Stone's counterclaim and third-party complaint were litigated together.

As the trial court found, the main thrust of Stone's third-party claim involved "an argued duty to disclose and the willful or fraudulent failure to do so." This Court, in its original opinion, found that there was a duty, that there was a breach of that duty, and that Stone was entitled to have the estate reopened, but was not entitled to any damages against the third-party defendants. Williams, Jr., in his petition before us, claims that Stone's third-party complaint was only for *indemnification* and that "Stone's request in her third-party complaint to reopen the estate was simply meaningless surplusage." We

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<sup>2</sup> In his petition before us, Williams, Jr., notes that the "Partial Summary Judgment" was "interlocutory and not subject to immediate appeal." See Rule 54(b), Ala. R. Civ. P.



cannot agree. On original deliverance, we considered whether summary judgment was appropriate on this third-party complaint, which contained claims that were both in personam and in rem. Although we did not elaborate on the issue, we necessarily determined that Stone's request to have the estate reopened was an action in rem.<sup>3</sup> Additionally, this Court, on another appeal in this case, treated the original declaratory judgment action filed by Williams, Jr., as one filed pursuant to the provisions of Ala. Code 1975, § 6-6-225. In *Ex parte Stone*, 502 So. 2d 683 (Ala. 1986), this Court stated the following concerning the nature of the underlying declaratory judgment action:

"Further support for the trial court's refusal to dismiss the Williams Group's complaint can be found in *Code of Alabama*, 1975, § 6-6-220, *et seq.*, the Declaratory Judgment Act. Specifically, § 6-6-225 provides:

" 'Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the

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<sup>3</sup> In 1A C.J.S. *Actions* § 4 (1985), pp. 309-10, it is said:

"As its name implies, an action in rem is an action or proceeding against a 'thing' or property, instead of a person; a proceeding to determine the state or condition of the thing itself; a judicial proceeding against the thing itself, which terminating in a valid judgment binds all the world. It has been said, however, that an action or proceeding in rem is difficult to define with accurate completeness, its exact nature being best understood by reference to its essential features."

estate of a decedent, infant, incompetent or insolvent may have a declaration of rights or legal relations in respect thereto:

“(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other;

“( 2 ) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

“( 3 ) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.’

“The instant dispute plainly falls within the scope of this statute, and the declaratory judgment action filed by the Williams Group is thus a viable means of settling this dispute.”

502 So. 2d at 686.

Stone’s claim in her third-party complaint, in which she seeks to reopen the estate, is not essentially different from the prayer of Williams, Jr., for relief in his declaratory judgment action, wherein he specifically asked:

“That in the event this Court *alters, modifies or otherwise changes the prior Orders and Judgments* in Civil Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiram Hank Williams and the copyright and renewal copyright renewal copyright [sic] interests of the musical compositions of Hiram ‘Hank’ Williams.”

To apply the principles of *res judicata* or of collateral estoppel in this case would be most inequitable, and

would violate the spirit of both Rule 1, A.R.Civ.P. and Rule 1, A.R.App.P., and would elevate form over substance. It is clear that both the complaint of Williams, Jr., and Stone's third-party complaint asked for a determination of Stone's right to share in the estate. As we indicated in our original opinion, the claims of the various parties in this case are so intertwined and the factual situation is so unique that notions of fairness require that the entire controversy be settled in one proceeding.<sup>4</sup> See *City of Tuscaloosa v. Fair*, 232 Ala. 129, 167 So. 276 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So. 2d 121 (1958). Stone did indeed appeal a judgment that held that she was not entitled to have the estate reopened. She convinced this Court that the record in this case showed that she was, in fact, entitled to have the estate reopened. To say that she was barred from raising her claims on that appeal because she did not also appeal a simultaneous judgment with the same holding would be unfair under *City of Tuscaloosa v. Fair* and the spirit of the Alabama Rules of Civil Procedure.<sup>5</sup>

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<sup>4</sup> It is perfectly clear that the judgment of the trial court on the declaratory judgment action and on the third-party complaint was premised upon an erroneous determination by the trial court that even if Stone was a natural child of Williams, Sr., she was not an "heir."

<sup>5</sup> The July 14, 1987, judgment of the trial court adjudicated all claims of the parties except Stone's claim that she was a natural child of Williams, Sr. Williams, Jr., strongly resisted the trial court's jurisdiction to make the subsequent finding. Also, it should be remembered that the trial court granted the third parties' motion for a *summary judgment*, and although the

Even though we hold that the third-party action seeking to reopen the estate was in rem and that Williams, Jr., essentially asked for the same relief in the original declaratory judgment action that Stone requested in her third-party complaint, we, nevertheless, have carefully considered the argument of Williams, Jr., that, because Stone did not appeal the summary judgment entered in favor of him on his declaratory judgment complaint, this Court should not have determined, on this appeal, whether Stone was entitled to have the estate reopened and to share in the estate because he was not a party to the appeal.

This Court, on original submission, carefully considered whether it should allow this estate to be reopened. The dissenting Justices were of the opinion that we should not permit it to be reopened. On original deliverance, we noted "throughout [the] opinion the unique character of this case," and that "[i]n fashioning an appropriate remedy, we [took] these peculiar circumstances into consideration."

Although the judgments appealed from were summary judgments, there was voluminous evidence presented, much of which we took into consideration in fashioning

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judgment was not specifically made final and appealable pursuant to the provisions of Rule 54(b), Ala.R.Civ.P. (it was denominated a "Partial Summary Judgment" by the trial court), it would not be in keeping with the spirit of the Alabama Rules of Civil Procedure to hold that Stone would now be precluded from sharing in the estate, especially when Williams, Jr., specifically asked that Stone's claim be adjudicated pursuant to Ala. Code 1975, § 6-6-225.

our order on original deliverance. The basic facts upon which our legal determination was made were not disputed; therefore, we were presented with questions of law, considering those admitted facts. As the original opinion shows, this Court carefully considered the rights of individuals, including petitioner Williams, Jr., who had relied upon the prior decrees that this Court held were due to be set aside, and our judgment was not unanimous; there were dissenting views.

On application for rehearing, we have carefully considered Stone's argument that we should allow the estate to be reopened from the beginning, and we have considered very closely the argument of Williams, Jr., that we should not let Stone share at all, even though she has been judicially declared to be the natural daughter of Williams, Sr. We believe we reached a just and equitable result on original deliverance, and we are of the opinion that the petition of Williams, Jr., for leave to appear for the purpose of seeking to vacate and modify this Court's July 5, 1989, opinion is due to be denied. In reaching this conclusion, we apply the statutory principle in Code, 1975 § 12-22-70, which is merely declaratory of an appellate court's power, that "[t]he appellate court may, upon the reversal of any judgment or decree, remand the same for further proceedings or enter such judgment or decree as the court below should have entered or rendered, when the record enables it to do so." The record in this case allows us to do that, because the facts of the case have been fully developed in this record, and the evidence is either undisputed or without material conflict. In such a case, the general rule particularly applicable as

stated in 5B C.J.S. Appeal and Error § 1925 (1958), pages 425-27:

"The general rule that the appellate court may, on reversal, render or direct final judgment is particularly applicable where the facts of the case have been fully developed on the trial, and there is nothing on which the party against whom reversal was made could strengthen his case or ground further proceedings, and it appears from the record that the evidence on another trial would be substantially unchanged."

Because we are of the opinion that Stone is not precluded by *res judicata* or collateral estoppel from having the estate reopened and because we believe that, based on the facts of this case, which were fully developed in this record and on the further fact that the position advanced by Williams, Jr., that Stone was not an "heir" was adequately presented by other parties on this appeal, and based on this Court's independent consideration of his position in view of the in rem nature of the proceeding, we cannot see how Williams, Jr., could strengthen his position on the law of this case. In fact, since original deliverance, we have located another case which appears to support the result we reached. The Supreme Court of Mississippi recently stated in *Collier v. Shell Oil Co.*, 534 So., 2d 1015, 1017 (Miss. 1988): "One who has acquired title by operation of law under prior interpretation of the law regulating descent and distribution must yield to a subsequent change of interpretation." See also *Reed v. Campbell*, 476 U.S. 852 (1986) (*Trimble v. Gordon*, 430 U.S. 762 (1978), can be applied retroactively).

Based on the foregoing, we deny the petition of Randall Hank Williams, Jr., and we overrule the application

for rehearing filed by Stone, and we affirm the entries of summary judgment for Smith and Jones, Murray, and Stewart, P.C., on Stone's claim for fraud.

PETITION OF RANDALL HANK WILLIAMS, JR., DENIED; APPLICATION FOR REHEARING BY STONE OVERRULED; OPINION EXTENDED; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Jones, Adams, and Steagall, JJ., concur. Almon and Shores, JJ., dissent.

Hornsby, C.J., and Houston, and Kennedy, JJ., recused.

*Catherine Yvonne Stone v. Gulf American Fire & Casualty Co., et al.*

SHORES, JUSTICE (dissenting).

The majority excuses its disregard of the law by calling this a unique case, but it cannot escape the fact that Williams, Jr., won the controversy between him and Stone in the court below and that Stone did not appeal that judgment. That judgment became final, and it decided the issue of whether Stone could share in the estate of Hank Williams, Sr. As the *Restatement (Second) of Judgments* § 33 (1982) states:

"A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action."

Stone appealed a judgment entered in her impleader action against certain other third parties. Williams, Jr.,



was not before this Court. Yet this Court has decided that Williams, Jr., now loses the case between him and Stone and by doing so refuses to follow all of the applicable substantive law pertinent to the issues and now disregards the procedural rules as well. If this case were not so unique, the issues between Williams, Jr., and Stone that were decided by a court of general jurisdiction in favor of Williams, Jr., would be settled forever because they are *res judicata*. As Professor Moore has written:

"If an appeal is taken from only part of the judgment, the remaining part is *res judicata*, and the vacation of the portion appealed from and remand of the case for further proceedings does not revive the trial court jurisdiction of the unappealed portion of the judgment."

1B J. Moore, *Moore's Federal Practice* ¶0.404 (2d ed. 1988).

I think the Court's action violates the constitution of this state and the Constitution of the United States in that it directly affects property rights of Williams, Jr., that were vested, if not at the time the estate of Williams, Sr., was finally closed, then surely by the entry of final judgment in his favor in his declaratory judgment action, which this Court held was the proper way to finally determine whether Stone had an interest in the estate. As Professor Moore has said in commenting upon the failure of a court to give *res judicata* effect to binding prior orders:

"The due process clause of the Fourteenth Amendment should preclude a state from subsequently restricting or refusing effect to one of its judgments as *res judicata* beyond a certain point. The reasons for this conclusion are: judicial rights were vested by the judgment; they

may be divested by the usual judicial remedies of direct attack, and remedies to enjoin or otherwise obtain relief from the judgment; just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under a valid judgment. And a state constitutional due process provision would similarly act as a check upon state power to deprive a party unjustly of vested rights in a judgment rendered by the state court."

1B J. Moore, *Moore's Federal Practice* ¶0.406 (2d ed 1988).

It has often been said that hard cases make bad law. This case demonstrates that unique facts can result in a disregard for all law.

Almon, J., concurs.

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**APPENDIX D-1**

U.S. Constitution, Amendment 5

**AMENDMENT 5**

**Criminal actions – Provisions concerning – Due process of Law and just compensation clauses.** – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment 14,  
Section 1

**AMENDMENT 14**

**§ 1. Citizenship – Due process of law – Equal Protection.** – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 26-11-1, Code of Alabama (1975), as amended

**§ 26-11-1. Legitimation by marriage of parents and recognition of child by father.**

The marriage of the mother and reputed father of a bastard child renders it legitimate if the child is recognized by the father as his child. (Code 1852, § 2008; Code 1867, § 2404; Code 1876, § 2742; Code 1886, § 2364; Code 1896, § 364; Code 1907, § 5199; Code 1923, § 9299; Code 1940, T. 27, § 10.)

Section 26-11-2, Code of Alabama (1975), as amended

**§ 26-11-2. Legitimation by written declaration of father; certification minutes of court to bureau of vital statistics, etc.**

The father of a bastard child may legitimate it and render it capable of inheriting his estate by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age and the name of the mother and that he thereby recognizes it as his child and capable of inheriting his estate, real and personal, as if born in wedlock. The declaration being acknowledged by the maker before the judge of probate of the county of his residence or its execution proved by the attesting witnesses, filed in the office of the judge of probate and recorded on the minutes of his court has the effect to legitimate such child. A certified copy of the minutes of the court shall be sent by the judge of probate to the bureau of vital statistics, state board of health and to the registrar of vital statistics of the county within 30 days after the minutes are recorded. (Code 1852, § 2009; Code 1867, § 2405; Code 1876, § 2743; Code 1886, § 2365; Code 1896, § 365; Code 1907, § 5200; Code 1923, § 9300; Code 1940, T. 27 § 11; Acts

1959, No. 640, p. 1555; Acts 1961, No. 802, p. 1165; Acts 1961, Ex. Sess., No. 175, p. 2136.)

Section 26-17-6, Code of Alabama (1975), as amended

**§ 26-17-6. Action to determine father and child relationship; who may bring action; when action may be brought; stay until birth; adopted children.**

(a) A child, a child's natural mother, or a man presumed to be its father under subdivision (1), (2), or (3) of section 26-17-5(a), may bring an action within five years of the birth of said child for the purpose of declaring the existence of the father and child relationship presumed under subdivision (1), (2), or (3) of section 26-17-5(a); or

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (4) or (5) of section 26-17-5(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 26-17-5 may be brought by the child, the mother, or personal representative of the child, the public authority chargeable by law with support of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

(e) If the child has been adopted, an action may not be brought. (Acts 1984, No. 84-244, p. 375, § 6).

Section 43-8-48, Code of Alabama (1975), as amended

**§ 43-8-48. Parent and child relationship.**

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the right of the child to inherit from or through either natural parent;

(2) In cases not covered by subdivision (1) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child. (Acts 1982, No. 82-399, § 2-109).

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APPENDIX E-1

SUPREME COURT OF THE UNITED STATES

No. A-529

Randall Hank Williams,

Petitioner

v.

Catherine Yvonne Stone

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ORDER

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UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including March 30, 1990.

/s/ Byron R. White  
Associate Justice of the  
Supreme Court of the  
United States

Dated this 25th  
day of January, 1990.

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APPENDIX F-1

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and )	
WESLEY H. ROSE and ROY ACUFF,) )	
as Trustees in Liquidation for )	
Stockholders of Fred Rose )	
Music, Inc. and Milene Music, )	
Inc., both Tennessee Corpora- )	Case No.
tions, )	CV-85-1316
Plaintiffs, )	
v. )	
CATHERINE YVONNE STONE, )	
Defendant. )	

SECOND AMENDED COMPLAINT

Come now Plaintiffs Randall Hank Williams, Wesley H. Rose and Roy Acuff, etc., and, pursuant to Rule 15(a), Alabama Rules of Civil Procedure, file this Second Amended Complaint, which replaces and supercedes the Complaint and Amended Complaint heretofore filed in Civil Action No. 85-1316. The Plaintiffs respectfully show unto the Court as follows:

1. This is an action for a declaratory judgment seeking to have the Court declare that the orders and judgments of this Court in the actions styled *In The Matter of the Estate of Hiram "Hank" Williams*, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 25,056 and *In the Matter of the Guardianship Estate of Randall Hank Williams, a minor*, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 27,960 are final and binding upon Defendant Catherine Yvonne Stone, and to

declare that Defendant Catherine Yvonne Stone has no right or entitlement to (1) the proceeds of the Estate of Hiriam "Hank" Williams, or (2) the copyright interests and any royalties or other remuneration flowing therefrom in any and all songs and other copyrighted musical compositions of Hiriam "Hank" Williams. This action is brought pursuant to Section 6-6-220, *et seq.* of the *Code of Alabama* (1975).

2. Randall Hank Williams is a resident of the State of Alabama and is the sole heir and distributee of the Estate of Hiriam "Hank" Williams, deceased.

3. Wesley H. Rose and Roy Acuff are the Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., Tennessee corporations which heretofore acquired rights in musical compositions and works written and/or composed by Hiriam "Hank" Williams.

4. Catherine Yvonne Stone is an individual, current residence unknown, who claims to be an illegitimate daughter of Hiriam "Hank" Williams. She is believed to be the natural daughter of one Bobbie W. Jett, and is the legally adopted daughter of Mr. and Mrs. George Wayne Deupree.

5. Hiriam "Hank" Williams, who died intestate, was a resident of the State of Alabama at the time of his death on January 1, 1953, and his estate was probated in Montgomery County, Alabama. Plaintiff Williams is the natural child and heir of Hiriam "Hank" Williams, and is the

same individual whose guardianship estate was the subject of Case No. 27,960 in the Circuit Court of Montgomery County, Alabama, in Equity, styled *In the Matter of the Guardianship Estate of Randall Hank Williams, a minor*.

6. In Case No. 25,056, in the Circuit Court for Montgomery County, Alabama, In Equity, styled *In the Matter of the Estate of Hiriam "Hank" Williams, Deceased*, this Court decided various matters relating to the Estate of Hiriam "Hank" Williams.

7. In Case No. 25,056, this Court appointed a guardian ad litem to represent the interests of any non-represented minor person or persons having an interest in or claim to the estate of Hiriam "Hank" Williams. Notice of the proceedings was given to the adoptive parents of Defendant Stone.

8. In Case No. 27,960, this Court heard and decided certain issues relating to, among other things, contractual rights and copyright renewal rights in certain songs composed by Hiriam "Hank" Williams, as more fully described in paragraph thirteen (13), below. As part of those proceedings, this Court appointed a guardian ad litem to represent the interests of any non-represented minor person or persons who might have an interest in the matters involved in the litigation. Notice of these proceedings was given to the adoptive parents of Defendant Stone.

9. In compliance with his obligation in both Case No. 25,056 and Case No. 27,960, the guardian ad litem asserted that a minor child was born to one Bobbie W. Jett on or about January 6, 1953, further asserting that said child was the daughter of Hiriam "Hank" Williams, and was therefore entitled to share equally in the estate of her

alleged father and in the proceeds of contractual and copyright arrangements regarding his music and songs. The guardian ad litem participated fully in the proceedings in both cases before this Court and fully and adequately represented the interests of the said minor child, who is the same person as the Defendant in this matter. The adoptive parents of the Defendant were present and participated in the proceedings before this Court in the cases described above, in matters relevant to the claims and rights of Catherine Yvonne Stone.

10. On December 1, 1967, this Court issued an order in Case No. 25,056, finding and concluding that the alleged minor child of Hiriam "Hank" Williams, the same person as Defendant herein, had no right of inheritance from Williams and no right to receive any part of his estate. This Court went on to find that the movant, Randall Hank Williams, was the sole heir and only distributee of the Estate of Hiriam "Hank" Williams. Said estate ultimately passed under Alabama's laws of descent and distribution to said heir.

11. On January 30, 1968, after lengthy evidentiary proceedings, this Court entered an order in Case No. 27,960 which, among other things, found and concluded that the minor child born of Bobbie W. Jett, the same person as the Defendant herein, was not an heir of Hiriam "Hank" Williams and had no rights in the copyrights or in the rights to renew those copyrights.

12. From and after the death of Hiriam "Hank" Williams, Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in interest, accounted to and paid to the Estate of Hiriam "Hank" Williams, royalties arising

from the usages of the songs composed by Hiram "Hank" Williams. After the closing of said estate, and in reliance on the orders of this Court, to which reference is made above, Fred Rose Music, Inc. and Milene Music, Inc. paid such royalties to Randall Hank Williams as the sole heir of the estate of his father.

13. In 1963 Irene Smith, then guardian for Randall Hank Williams, at the time a minor, and Fred Rose Music, Inc. entered into a contract and agreement with regard to the renewal rights of copyright in all the musical compositions written and/or composed by Hiram "Hank" Williams.

14. As previously noted in paragraph eight (8), above, this Court, in the case styled, *In the Matter of the Guardianship Estate of Randall Hank Williams, a minor*, Case No. 27,960, In Equity, found that the contract entered into in 1963 was in the best interests of the ward, Randall Hank Williams, and further that Hiram Hank Williams' sole heir and distributee, Randall Hank Williams, was the only heir having an interest in the renewal rights for the copyrighted musical compositions and works of Hiram "Hank" Williams.

15. Plaintiffs Acuff and Rose, in their capacities described above, are the successors-in-interest to Fred Rose Music, Inc., which was a necessary party in Case 27,960 due to the controversy over its contract with the guardianship estate, as described in the preceeding [sic] paragraph.

16. After Randall Hank Williams attained the age of majority, he continued to maintain the same, or similar, contractual relationship with Fred Rose Music, Inc.,

which continues to have an interest in the Hiriam "Hank" Williams copyrights, as more fully described in paragraph twenty-one (22) below.

17. Presently, Defendant Catherine Yvonne Stone openly and publicly contends that she is the natural daughter of Hiriam "Hank" Williams and, as such, is entitled to an interest in the copyrights existing at the time of Williams' death, and/or in Williams' estate. Defendant has, through counsel, made formal written demand upon Plaintiffs for an accounting of sums claimed due her with respect to the renewal copyright interest in the Hiriam "Hank" Williams compositions. On numerous occasions, personally and through her attorneys, she has announced her intention to pursue her claims in an effort to establish her alleged rights. In furtherance thereof, she has filed in this Court Civil Action No. 85-1007-PH to secure documents from the sealed files of this Court, in Cases 25,056 and 27,960, which are acknowledged to be sought for use in her pursuit of those claims, all of which are contrary to the prior orders of this Court.

18. On August 5, 1985, counsel for Defendant Stone sent letters to Randall Hank Williams and Fred Rose Music, Inc., copies of which are attached hereto as Exhibits A and B, respectively.

19. In the letters, Exhibits A and B, Defendant Stone claimed to be Hiriam "Hank" Williams' daughter and further claimed an interest in the renewal copyrights of the musical compositions of Hiriam "Hank" Williams. She also claimed unspecified sums as due and owing for the previous exercise of rights in copyrights of Hiriam

"Hank" Williams' musical compositions. Finally the letters stated that if the demands contained therein were not met, litigation would be commenced in an effort to secure her claims.

20. In addition to the demands made in the letters to Randall Hank Williams and Fred Rose Music, Inc., Defendant Stone has appeared on national television on NBC's "The Today Show" on or about August 28, 1985, wherein she stated that suit would be commenced "within two to three weeks" on her behalf.

21. Defendant Stone has granted numerous interviews to various news publications wherein she has reiterated her intention to commence litigation to enforce her claims of entitlement not only to the copyright renewal rights, but also to property interests derived from the Estate of Hiram "Hank" Williams.

22. Fred Rose Music, Inc., has conveyed its interest in the copyrights to Acuff-Rose-Opryland Music, Inc. and has warranted title to the copyrights. Because of the numerous statements and claims made by Defendant Stone, Acuff-Rose-Opryland Music, Inc., has notified Randall Hank Williams of its intention to cease paying royalties and to withhold all such funds pending the resolution and adjudication of Defendant Stone's claims.

23. Civil Action 85-1007-PH, including the original Petition for Mandamus and the ancillary Motion to Order Production of Certain Documents, is simply part of an overall effort by Defendant Stone to relitigate matters previously and finally decided by this Court in Cases 25,056 and 27,960, and an effort by Defendant to avoid and frustrate the jurisdiction and prior orders of this



Court by resort to the courts of some foreign jurisdiction which has no logical connection or nexus with the matters placed in controversy by the Defendant's public statements.

24. The matters and things presently being alleged by the Defendant have already been litigated and decided by this Court in actions to which Defendant, through her guardian ad litem, was a party, namely Cases No. 25,056 and 27,960.

25. Since the final orders of this Court in Cases 25,056 and 27,960, Movants Williams, Rose and Acuff, the latter two in their capacity aforesaid, have relied on those orders in the conduct of their business relative to the copyrights and estate in question, believing and proceeding on the basis that this Court's orders finally and unequivocally established that Defendant Stone had no rights in or to the copyrights and estate in question.

26. By the statements and conduct described in paragraphs (17) through (21), above, Defendant Stone has willfully and recklessly interfered with Plaintiffs' contractual and business relationships, to the detriment and damage of the Plaintiffs. More particularly, Defendant Stone's public assertion that she is the natural daughter of Hiram "Hank" Williams, and the various claims made by her predicated on that assertion, are without factual and legal support, and thus recklessly made, in that:

(a) Defendant Stone has been finally adjudicated by binding orders of this Court to have no interest whatsoever in the estate of Hiram "Hank" Williams;

(b) Defendant Stone has never been adjudicated a child of Hiriam "Hank" Williams, nor has she otherwise supported her unfounded claims that she is a child of Williams;

(c) Defendant Stone has failed to avail herself of the procedures set forth in *Code of Alabama* (1975) Sections 26-17-1, *et seq.*, or any procedures provided by any previously-applicable Alabama law, to establish that she is a child of Hiriam "Hank" Williams;

(d) Defendant Stone is, in any event, barred by Alabama law from any attempt now to establish that she is the child of Hiriam "Hank" Williams, in that Section 26-17-6(e) of the *Code of Alabama* (1975) prohibits adopted children from asserting such claims; and

(e) Defendant Stone is also barred from any attempt now to establish that she is the child of Hiriam "Hank" Williams by various legal and equitable principles and doctrines including, but not necessarily limited to, statutes of limitations, waiver, laches, estoppel, *res judicata* and collateral estoppel.

27. A controversy of a justiciable nature has arisen between the parties to this action in that:

(a) Plaintiff Randall Hank Williams has been adjudicated by this Court to be the sole heir of Hiriam "Hank" Williams, and thus the sole person with rights in and to the Estate of Hiriam "Hank" Williams. Pursuant to, and in reliance on, that adjudication, Plaintiff Randall Hank Williams has used and enjoyed the properties, rights and privileges passing to him under said estate, and has contracted with third parties with respect thereto. By agreement with

Plaintiff Randall Hank Williams, judicially approved by an order of this Court, Plaintiffs Wesley H. Rose and Roy Acuff, in their aforementioned capacity, have been entitled to exercise certain rights with respect to the musical compositions and other properties of Hiram "Hank" Williams, have heretofore been receiving and disbursing royalties in connection therewith, and, in reliance on the prior orders of this Court establishing their right to do so, have entered into contractual relationships with third parties regarding same. On the other hand:

(b) Defendant Catherine Yvonne Stone is, despite (i) her failure to prove that she is the natural child of Hiram "Hank" Williams, (ii) binding judicial decisions that she has no interest in the Estate of Hiram "Hank" Williams, (iii) the absence of any adjudication under Alabama law that she is a child of Hiram "Hank" Williams (iv) her own failure to pursue an adjudication under Alabama law that she is a child of Hiram "Hank" Williams (v) the existence of a bar in *Code of Alabama* §26-17-6(e) to her bringing an action to establish herself as a child of Hiram "Hank" Williams, and (vi) other bars to any effort by her to establish herself as a child of Hiram "Hank" Williams, including statutes of limitations, waiver, laches, estoppel, res judicata and collateral estoppel, nevertheless claiming publicly to be a child of Hiram "Hank" Williams, and therefore to have an interest in the Estate of Hiram "Hank" Williams and the various properties which Plaintiffs have heretofore owned, used and enjoyed and with respect to which they have entered into contractual relationships with third parties.

28. Randall "Hank" Williams and Wesley H. Rose and Roy Acuff are suffering and will continue to suffer

real, immediate and irreparable injury by virtue of Defendant Stone's claims in that royalties and other payments justly due and owing them are being withheld and will be withheld in the future pending the outcome of this controversy. In addition, Randall Hank Williams is suffering and will continue to suffer substantial, irreparable injury in that Defendant Stone's claims and conduct are interfering with his right to use and enjoy the properties, rights, and privileges passing to him through the estate of his father, Hiram "Hank" Williams, including, but not necessarily limited to, contracts, licenses, etc.

29. Randall Hank Williams and Roy Acuff and Wesley H. Rose aver that in order to determine the rights, status and legal relations of the parties hereto with respect to the matters set forth herein, it is necessary and desirable that this Court make and enter a Declaratory Judgment or Decree pursuant to the provisions of [sic] Section 6-6-220, *et seq.* of the *Code of Alabama* (1975).

WHEREFORE, PREMISES CONSIDERED, Randall Hank Williams and Wesley H. Rose and Roy Acuff pray that the Court will enter a declaratory judgment establishing the following:

1. That Defendant Stone has never been adjudicated, under the laws of the State of Alabama, to be the child of Hiram "Hank" Williams, and thus does not enjoy the status claimed by her in her statements and conduct described in paragraphs (17) through (21), above;

2. That, because of her status as an adopted child, Defendant Stone is barred under *Code of Alabama* (1975) Section 26-17-6(e) from now attempting to establish that she is a child of Hiram "Hank" Williams;

3. That Defendant Stone is barred from now attempting to establish that she is a child of Hiram "Hank" Williams by the applicable statute of limitations, the doctrines of laches, waiver and estoppel, and, because of this Court's prior judgments and orders in Civil Actions Nos. 25,056 and 27,960, by the doctrines of res judicata and collateral estoppel;

4. That, consistent with the prior orders and judgments of this Court in Civil Actions Nos. 25,056 and 27,960, as more fully described in paragraphs 10, 11, and 14, above, Randall Hank Williams is the sole child of Hiram "Hank" Williams, and thus is the sole person with rights in and to the Estate of Hiram "Hank" Williams, including, but not limited to, rights in musical compositions, recordings, copyrights, use of the name and likeness of Hiram "Hank" Williams, and all other tangible and intangible rights deriving from said estate.

In addition, Plaintiffs pray for such other, further and different relief to which they may be entitled.

Respectfully submitted,

/s/ Maury D. Smith  
MAURY D. SMITH

/s/ Sterling G. Culpepper, Jr.  
STERLING G. CULPEPPER, JR.

/s/ David R. Boyd  
DAVID R. BOYD

Attorneys for Wesley H. Rose  
and Roy Acuff, Trustees in  
Liquidation for Stockholders of  
Fred Rose Music, Inc., a

Tennessee Corporation, and  
Randall Hank Williams, known  
professionally as Hank Williams, Jr.

OF COUNSEL:

BALCH & BINGHAM  
P. O. Box 78  
Montgomery, Alabama 36101  
(205) 834-6500

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon Thomas T. Gallion, III, Esq., 509 South Court Street, Montgomery, Alabama 36104, F. Keith Adkinson, Esq., 1312 Eighteenth Street, N.W., Washington, D.C. 20036, James A. Goodman, Esq. and Vincent H. Chieffo, Esq., 9601 Wilshire Blvd., Penthouse, Beverly Hills, California 90210-5270 by either placing same in the United States mail, postage prepaid and properly addressed on this the 14th day of November, 1985, or by Federal Express delivery on the same date.

/s/ David R. Boyd  
OF COUNSEL

---

EXHIBIT "A"

LAW OFFICES

RUDIN, RICHMAN & APPEL

A PROFESSIONAL CORPORATION

PENTHOUSE

F-1.14

9601 WILSHIRE BOULEVARD  
BEVERLY HILLS, CALIFORNIA 90210-5270

August 5, 1985

Mr. Hank Williams, Jr.  
c/o J. R. Smith  
P.O. Box 1088  
Cullman, Alabama 35055

Re: *Cathy Yvonne Stone - Hank Williams, Sr. Copyrights*

Dear Mr. Williams:

Please be advised that this firm, in association with the law offices of F. Keith Adkinson, Esq., represents Cathy Yvonne Stone. Ms. Stone has just recently learned that she is the natural daughter of Hiram "Hank" Williams and Bobbie Jett. Knowledge of the identity of her natural father had been actively concealed from Ms. Stone.

As the natural daughter of Hank Williams, she is the equitable owner of an undivided interest in the renewal copyrights to all Hank Williams compositions under both the Copyright Act of 1909 and the Copyright Act of 1976. These renewal copyrights include, but are not limited to, the musical compositions entitled "Cold, Cold Heart"; "Honkey Tonkin' "; "I Saw The Light"; "The Blues Come Around"; "Mind Your Own Business"; "I'm So Lonesome I Could Cry"; "Long Gone Lonesome Blues"; "Moanin' The Blues"; "Hey Good Looking"; "Ramblin' Man"; "Jambalaya (On The Bayou)"; and "Your Cheatin' Heart."

We have been advised that you, or your affiliates, claim, and have exercised, interests in and to the Hank



Williams, Sr. renewal copyrights, have failed to account to our client her proper share of all revenues derived from the exercise of such rights, and have denied the ownership interests of our client in such renewal copyrights. We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father.

Accordingly, demand is hereby made that you recognize our client's undivided ownership interests in and to all Hank Williams renewal copyrights and that you account to her all sums received, and disbursed, by you with respect to the Hank Williams, Sr. renewal copyrights. In addition, please provide to the undersigned a list of all Hank Williams copyrights indicating whether they are in their renewal term and when such renewal term will, or has, commenced; identifying all individuals or entities known to you who claim any ownership interests in and to said renewal copyrights; and, identifying all individuals who claim any royalty, or other participation, in and to the revenues derived from the exploitation of those renewal copyrights. The information requested should be provided on a worldwide basis.

We request that you provide us with your initial written response to this demand within 15 days of this letter. Please be advised that we have been instructed by our client to take all necessary steps to protect and preserve her rights in the premises, including the commencement of litigation. In the event that we do not hear from you within 15 days from the date of this letter, we will interpret your silence as a rejection of Ms. Stone's claim

and a refusal to cooperate in any way. In such circumstances, we will take such further steps as we believe necessary without further advice to you.

Sincerely,

RUDIN, RICHMAN & APPEL

By: /s/ Vincent H. Chieffo  
VINCENT H. CHIEFFO

VHC:le/4p-3098

cc: Cathy Yvonne Stone  
F. Keith Adkinson, Esq.  
Milton A. Rudin, Esq.

---

**EXHIBIT "P"**

LAW OFFICES

RUDIN, RICHMAN & APPEL

A PROFESSIONAL CORPORATION

PENTHOUSE

9601 WILSHIRE BOULEVARD

BEVERLY HILLS, CALIFORNIA 90210-5270

August 5, 1985

Fred Rose Music, Inc.  
c/o Acuff-Rose Opryland, Inc.  
2510 Franklin Road  
Nashville, Tennessee 37204

Re: Cathy Yvonne Stone - Hank Williams, Sr. Copyrights

Gentlemen:

Please be advised that this firm, in association with the law offices of F. Keith Adkinson, Esq., represents Cathy Yvonne Stone. Ms. Stone has just recently learned that she is the natural daughter of Hiram "Hank" Williams and Bobbie Jett. Knowledge of the identity of her natural father had been actively concealed from Ms. Stone.

As the natural daughter of Hank Williams, she is the equitable owner of an undivided interest in the renewal copyrights to all Hank Williams compositions under both the Copyright Act of 1909 and the Copyright Act of 1976. These renewal copyrights include, but are not limited to, the musical compositions entitled "Cold, Cold Heart"; "Honkey Tonkin' "; "I Saw The Light"; "The Blues Come Around"; "Mind Your Own Business"; "I'm So Lonesome I Could Cry"; "Long Gone Lonesome Blues"; "Moanin' The Blues"; "Hey Good Looking"; "Ramblin' Man"; "Jambalaya (On The Bayou)"; and "Your Cheatin' Heart."

We have been advised that you, or your affiliates, claim, and have exercised, interests in and to the Hank Williams, Sr. renewal copyrights, have failed to account to our client her proper share of all revenues derived from the exercise of such rights, and have denied the ownership interests of our client in such renewal copyrights. We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father.

Accordingly, demand is hereby made that you recognize our client's undivided ownership interests in and to all Hank Williams renewal copyrights and that you account to her all sums received, and disbursed, by you

with respect to the Hank Williams, Sr. renewal copyrights. In addition, please provide to the undersigned a list of all Hank Williams copyrights indicating whether they are in their renewal term and when such renewal term will, or has, commenced; identifying all individuals or entities known to you who claim any ownership interests in and to said renewal copyrights; and, identifying all individuals who claim any royalty, or other participation, in and to the revenues derived from the exploitation of those renewal copyrights. The information requested should be provided on a worldwide basis.

We request that you provide us with your initial written response to this demand within 15 days of this letter. Please be advised that we have been instructed by our clients to take all necessary steps to protect and preserve her rights in the premises including the commencement of litigation. In the event that we do not hear from you within 15 days from the date of this letter, we will interpret your silence as a rejection of Ms. Stone's claim and a refusal to cooperate in any way. In such circumstances, we will take such further steps as we believe necessary without further advice to you.

Sincerely,

RUDIN, RICHMAN & APPEL

By: /s/ Vincent H. Chieffo  
VINCENT H. CHIEFFO

VHC:le/4P-3098

cc: Cathy Yvonne Stone  
F. Keith Adkinson, Esq.  
Milton A. Rudin, Esq.

---

APPENDIX F-2

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and )	
WESLEY H. ROSE and ROY ACUFF, )	CASE NO.
as Trustees in Liquidation for )	CV-85-1316-Ph
Stockholders of Fred Rose )	
Music, Inc. and Milene Music, )	
Inc., both Tennessee Corpora- )	
tions, )	
Plaintiffs, )	
v. )	
CATHERINE YVONNE STONE, )	
Defendant. )	
_____ )	
CATHERINE YVONNE STONE, )	
Counter-Claimant )	
v. )	
RANDALL HANK WILLIAMS, )	
Counter-Defendant. )	
_____ )	

COUNTERCLAIM FOR ESTABLISHMENT OF  
PATERNITY: DECLARATION OF RIGHTS;  
AND IMPOSITION OF CONSTRUCTIVE  
OR RESULTING TRUST

Counter-claimant Catherine Yvonne Stone (hereinafter "Stone") alleges as follows:

1. Stone is the natural daughter of Hiram "Hank" Williams (hereinafter "Williams Sr.") and was born on January 6, 1953, five days after Williams Sr.'s death.

2. Stone is informed and believes and based thereon alleges that counter-defendant Randall Hank Williams (hereinafter "Williams Jr.") is a resident of the State of Tennessee.

3. Stone is informed and believes and based thereon alleges that Williams Jr. claims to be the sole natural child of Hiram "Hank" Williams (hereinafter "Williams Sr.") and the only person entitled to inherit from the estate of Williams Sr.

4. Stone is informed and believes and based thereon alleges that the estate of Williams Sr. was opened in or about January 1953 and administered under the jurisdiction of this court continuously from 1953 through in or about August 1975. Stone is informed and believes that the estate closed in or about August 1975.

5. Stone is informed and believes and based thereon alleges that the only alleged heir of Williams Sr. to receive any proceeds from the Williams Sr. estate is Williams Jr.

6. Stone contends that:

(a) She is the natural daughter of Williams Sr.

(b) As natural daughter of Williams Sr., she is entitled to share at least one-half the proceeds of his estate.

7. Counter-defendant, Williams Jr., disputes Stone's contentions and contends that Stone is not the natural daughter of Williams Sr. and that she is not entitled to any proceeds from the estate of Williams Sr.

F-2.3

8. An actual controversy therefore exists between Stone and Williams Jr. and Stone prays for a determination that:

(a) She is the natural daughter of Williams Sr.;

(b) As natural daughter of Williams Sr., she is entitled to at least one-half the proceeds of the estate of Williams Sr.;

(c) Williams Jr. must render an immediate accounting of all revenue, income, monies and other consideration administered through the estate of Williams Sr. and paid to Williams Jr. from that estate.

9. Stone prays that a constructive and/or resulting trust be imposed on all money or other consideration received by Williams Jr. from the estate of Williams Sr. pending the determination of this action.

WHEREFORE, Stone prays for a judgment as follows:

1. That Stone's paternity be determined and adjudicated;

2. That Stone be awarded her proportionate interest in the proceeds of the estate of Williams Sr.;

3. That Randall Hank Williams be ordered to account to Stone for all monies or other consideration received from the estate of Williams Sr.;

4. For imposition of a constructive or resulting trust on all monies derived by Randall Hank Williams from the estate of Williams Sr.



5. For reasonable attorneys' fees, costs of suit herein incurred, any such other and further relief as this court deems just and proper.

Counter-claimant Catherine Yvonne Stone hereby demands trial by jury.

Respectfully submitted,  
Haskell, Slaughter & Young

---

Thomas T. Gallion III  
207 Montgomery Street  
Bell Building, Suite 1250  
Montgomery, Alabama 36104

F. Keith Adkinson  
1312 Eighteenth Street, N.W.  
Washington, D.C. 20036

Rudin, Richman & Appel  
A Professional Corporation  
Vincent H. Chieffo  
James A. Goodman  
9601 Wilshire Boulevard  
Penthouse  
Beverly Hills, CA 90210-5270

## APPENDIX F-3

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS,	)	CASE NO.
and WESLEY H. ROSE and ROY	)	CV-85-1316-Ph
ACUFF, as Trustees in	)	
Liquidation for Stockholders of	)	
Fred Rose Music, Inc., both	)	
Tennessee corporations,	)	
	)	
Plaintiffs,	)	

V.

CATHERINE YVONNE STONE,	)
Defendant.	)

---

CATHERINE YVONNE STONE,	)
Counter-Claimant	)

V.

RANDALL HANK WILLIAMS,	)
Counter-Defendant.	)

---

CATHERINE YVONNE STONE,	)
Third Party Plaintiff,	)

V.

GULF AMERICAN FIRE &	)
CASUALTY COMPANY;	)
AMERICAN STATES	)
INSURANCE COMPANY;	)
JONES, MURRAY & STEWART,	)
P.C.; IRENE SMITH;	)
THE ESTATE OF	)

ROBERT B. STEWART; A, being that real Party in interest known only to Stone as Gulf American Fire & Casualty Company; B, being that real party in interest known only to Stone as American States Insurance Company; C, being

that real party in interest known only to Stone as Jones, Murray & Stewart, P.C.; D, being that real party in interest known only to Stone as Irene Smith; E, being that real party in interest known only to Stone as the Estate of Robert B. Stewart; F, whether singular or plural, being that person, firm, corporation or association who or which was or served as a surety on the bond of the administrator or administratrix of the estate of Hiram "Hank" Williams; G, whether singular or plural, being that person, firm, corporation, or association, who or which was appointed and served as the administrator or administratrix of the estate of Hiram "Hank" Williams; H, whether singular or plural, being that person, firm, corporation, or association, who or which was the attorney for the estate of Hiram "Hank" Williams; I, whether singular or plural, being that person, firm, corporation, or association, who or which had the responsibility, obligation and ability to advise the Probate Court or Circuit Court of Montgomery County, Alabama of the existence and status of Stone; J, whether singular or plural, being that person, firm, corporation, or association, who or which concealed the identity, existence, claims and rights of Stone from Montgomery County Circuit Court; K, whether singular or plural, being that person, firm, corporation or association, who or which concealed and suppressed from Stone relevant facts and information regarding her claims and interest in the estate of Hiram "Hank" Williams; L, whether singular or plural, being that person, firm, corporation or association, who or which participated in a conspiracy or agreement to conceal Stone's existence and identity from the Montgomery County Circuit Court or Probate Court; M, whether singular or plural, being that person, firm, corporation, or association who or which caused the damages suffered by Stone as alleged in the Third Party Complaint; N, whether singular or plural, being that person, firm, corporation or association who or which is the successor in interest of any of the above fictitiously named and described real parties in interest.

Third Party Defendants.

SUMMONS

To any sheriff or any person authorized by either Rules 4.1(b)(2) or 4.2(b)(2) or 4.4(b)(2) of the Alabama Rules of Civil Procedure to effect service.

You are hereby commanded to serve this summons and a copy of the complaint in this action upon:

Estate of Robert B. Stewart

Serve: June L. Stewart, Executrix  
3607 McCurdy Street  
Montgomery, Alabama 36111

Jones, Murray & Stewart, P.C.  
272 Commerce Street  
Montgomery, Alabama 36195

American States Insurance Company  
Serve: J.B. Ridgewell  
2525 E. South Boulevard  
Montgomery, Alabama 36116

Gulf American Fire & Casualty Company  
Serve: J.B. Ridgewell  
2525 E. South Boulevard  
Montgomery, Alabama 36116

Irene Smith  
610 North Barnett  
No. 2  
Dallas, Texas 75211

NOTICE TO DEFENDANT

The complaint which is attached to this summons is important and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the complaint, to DAVID CROMWELL JOHNSON, the lawyer for the plaintiff, whose address is:

F-3.4

9th Floor Title Building, 300 North 21st Street, Birmingham, Alabama 35203-3322.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must file the original of the Answer with the Clerk of this Court within a reasonable time afterward.

\_\_\_\_\_  
DEBRA HACKETT, CLERK

DATED:\_\_\_\_\_

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, )  
and WESLEY H. ROSE and ROY )  
ACUFF, as Trustees in )  
Liquidation for Stockholders of )  
Fred Rose Music, Inc., both )  
Tennessee corporations, )  
Plaintiffs, )

CASE NO.  
CV-85-1316-Ph

V. )  
CATHERINE YVONNE STONE, )  
Defendant. )

\_\_\_\_\_)  
CATHERINE YVONNE STONE, )  
Counter-Claimant )

V. )  
RANDALL HANK WILLIAMS, )  
Counter-Defendant. )

\_\_\_\_\_)  
CATHERINE YVONNE STONE, )  
Third Party Plaintiff, )

V. )  
GULF AMERICAN FIRE & )  
CASUALTY COMPANY, )  
AMERICAN STATES )  
INSURANCE COMPANY; )  
JONES, MURRAY & STEWART, )  
P.C.; IRENE SMITH; )  
THE ESTATE OF )

ROBERT B. STEWART; A, being that real party in interest  
known only to Stone as Gulf American Fire & Casualty  
Company; B, being that real party in interest known only  
to Stone as American States Insurance Company; C, being  
that real party in interest known only to Stone as Jones,

Murray & Stewart, P.C.; D, being that real party in interest known only to Stone as Irene Smith; E, being that real party in interest known only to Stone as the Estate of Robert B. Stewart; F, whether singular or plural, being that person, firm, corporation or association who or which was or served as a surety on the bond of the administrator or "administratrix of the estate of Hiriam "Hank" Williams; G, whether singular or plural, being that person, firm, corporation, or association, who or which was appointed and served as the administrator or administratrix of the estate of Hiriam "Hank" Williams; H, whether singular or plural, being that person, firm, corporation, or association, who or which was the attorney for the estate of Hiriam "Hank" Williams; I, whether singular or plural, being that person, firm, corporation, or association, who or which had the responsibility, obligation and ability to advise the Probate Court or Circuit Court of Montgomery County, Alabama of the existence and status of Stone; J, whether singular or plural, being that person, firm, corporation, or association, who or which concealed the identity, existence, claims and rights of Stone from Montgomery County Circuit Court; K, whether singular or plural, being that person, firm, corporation or association, who or which concealed and suppressed from Stone relevant facts and information regarding her claims and interest in the estate of Hiriam "Hank" Williams; L, whether singular or plural, being that person, firm, corporation or association, who or which participated in a conspiracy or agreement to conceal Stone's existence and identity from the Montgomery County Circuit Court or Probate Court; M, whether singular or plural, being that person, firm, corporation, or association who or which caused the damages suffered by Stone as alleged in the Third Party Complaint; N, whether singular or plural, being that person, firm, corporation or association who or which is the successor in interest of any of the above fictitiously named and described real parties in interest.

Third Party Defendants.



THIRD PARTY COMPLAINT FOR FRAUD,  
FRAUDULENT CONCEALMENT, CONSPIRACY  
AND TO ENFORCE SURETY BOND

Third party plaintiff, Catherine Yvonne Stone (hereinafter "Stone"), alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS  
FOR RELIEF

1. Plaintiffs Randall Hank Williams, Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., both Tennessee corporations (hereinafter collectively referred to as "plaintiffs"), have commenced an action against Stone for declaratory relief. A true and correct copy of plaintiff's Second Amended Complaint is attached hereto and fully incorporated herein as Exhibit "1".

2. Stone has commenced an action to establish her paternity and for a declaration of rights, an imposition of constructive or resulting trust against plaintiff and counter-defendant, Randall Hank Williams. A true and correct copy of that Counterclaim is attached hereto as Exhibit "2".

3. Stone is informed and believes and based thereon alleges that third party defendant Jones, Murray & Stewart, P.C. and its predecessors in interest (hereinafter "JM&S") is, and at all times herein relevant was, a professional legal corporation doing business in Montgomery County, Alabama.

4. Stone is informed and believes and based thereon alleges that Robert B. Stewart (hereinafter "Stewart") was

at all times herein relevant a principal and member of JM&S. Stewart and/or JM&S from in or about 1953 through in or about August, 1975 acted as attorney for the estate of Hiriam "Hank" Williams (hereinafter "the estate").

5. Stone is informed and believes and based thereon alleges that third party defendant Irene Smith (hereinafter "Smith") was from in or about 1955 through 1969 the administratrix of the estate. Stone is informed and believes that Smith is a resident of the State of Texas.

6. The estate was initially opened in or about January, 1953 and was first administered by the mother of "Hiriam" Hank Williams, Sr., (hereinafter Williams, Sr.), Lillian Williams Stone, until her death in or about 1955. At that time, the administratrix responsibilities were purportedly assumed by her daughter, and Williams Sr.'s sister, third party defendant Smith. Smith continued to act as administratrix of the estate until in or about 1969 when Smith resigned as administratrix because she was convicted of cocaine smuggling in Laredo, Texas. At that time, in or about 1969, Stewart assumed responsibility as the administrator for the estate and continued as attorney for the estate until it closed in or about August, 1975.

7. Stone is informed and believes and based thereon alleges that Stewart died in or about 1985 and his estate is presently being administered under the jurisdiction of the Probate Court of Montgomery County, Alabama. The executrix of the estate of Robert B. Stewart is June L. Stewart.

8. Stone is informed and believes and based thereon alleges that Gulf American Fire & Casualty Company

(hereinafter "GAFC"), and was, at all times herein relevant, a surety on the administrator's bond regarding the estate of Williams Sr. and had notice of all pertinent proceedings regarding the estate as hereinafter alleged. Stone is informed and believes that GAFC merged with American States Insurance ("ASIC") Company in or about 1979 and that American States Insurance Company is the successor in interest of GAFC.

9. Stone is unaware of the true names and capacities, whether individual, corporate, associate or otherwise of real parties in interest fictitiously described as defendants A through N inclusive, or any of them. Stone will seek leave of court to amend this Complaint to show the true names and capacities of said real parties in interest when same have been ascertained.

10. Smith and Stewart [sic] knew of Stone since her birth on January 6, 1953 and knew, since that time, that she had claims and rights in the estate of Williams, Sr. as the natural child of Hank Williams, Sr. While acting in their respective capacities as administrator and/or attorney for the estate, Smith, Stewart and JM&S had a confidential relationship with Stone; they were charged with the highest degree of fiduciary duty to Stone; they were obligated to fully advise her or her appropriate representatives of all material facts and theories which could affect her claims, rights and interest arising from the fact that she is the natural daughter of Hank Williams, Sr.; they were required to take whatever measures were necessary to protect her interest; and they were prohibited from placing the interest of another potential heir over

her interest. Smith, Stewart and JM&S knew, or had reason to know, that the Court, in connection with administering and making a determination with respect to the estate, would depend in great measure on the integrity and thoroughness of Stewart and JM&S and would depend on the facts and issues presented to the Court by Stewart.

FIRST CLAIM FOR RELIEF  
TO REOPEN THE ESTATE OF  
HIRIAM 'HANK' WILLIAMS  
BASED ON FRAUD ON THE COURT

11. Stone incorporates herein by reference each and every allegation set forth in paragraphs 1 through 10 of this Third Party Complaint as though fully set forth herein.

12. From in or about 1953 through sometime in 1967, Smith, Stewart and JM&S, through Stewart, and real parties in interest C, D, E, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim and rights as natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the Court.

13. As a direct and proximate result of the fraudulent concealment by Third Party defendants and real parties in interest as aforesaid, no guardian ad litem was appointed to represent Stone's interest from 1953 through sometime in 1967 and Stone was further precluded from adjudicating her paternity within two years of Williams, Sr.'s death as required by then applicable Alabama law.

14. In or about 1967 Stone's identity was finally disclosed to the Court and on or about December 1, 1967 in the matter styled *In the Matter of the Estate of Hiram "Hank" Williams, Deceased*. The Circuit Court of Montgomery County, Alabama, in Equity, Case No. 25-056, entered an order which purported to affect Stone's rights to the Williams estate (hereinafter "the order").

15. To the extent the order purports to in any manner govern Stone's rights in the estate of Williams, Sr. it is, and has been since the day if [sic] was entered, a legal nullity without any force or effect because, in part, of the fraudulent conduct alleged hereinabove.

16. Third party defendants and real parties in interest C, D, E, G, H, I, J, K, M and N, knew, or had reason to believe, at all times relevant hereto, that under existing Alabama law, Stone was entitled within one or two years after her twenty-first birthday, on January 6, 1974, to pursue appropriate legal action to set aside the order of December 1, 1967, or any other orders entered before her twenty-first birthday which purported to affect her rights.

17. Stewart, acting as successor in interest of Smith, and JM&S, and real parties in interest C, D, E, G, H, I, J, K, M and N, in furtherance of the fraudulent conduct alleged hereinabove, concealed and suppressed relevant facts and information alleged hereinabove from Stone, both before and after she reached the age of majority.

18. In furtherance of the fraudulent conduct alleged hereinabove, the estate was closed in or about August, 1975 and Stewart, acting as successor in interest to Smith and JM&S, and real parties in interest C, E, G, H, I, J, K,

M and N, contrary to their confidential special and fiduciary relationship to Stone as a claimant to the estate, failed at any time to advise Stone or any of her representatives of any pertinent facts, theories, or of any rights or claims she may have either before or after she reached the age of majority, and intentionally failed to notify Stone of any of her representatives that the estate would close in or about 1975.

19. As a proximate result of the wrongful acts alleged, the order of December 1, 1967, and all subsequent or prior orders which purport to affect Stone's rights to the estate, including the final order of distribution of the estate, were procured, with respect to any rights of Stone, by fraud perpetrated on the Court. The estate is therefore due to be reopened and Stone is entitled to share in the estate as the natural daughter of Hank Williams, Sr.

20. As a proximate result of the wrongful acts herein alleged, Stone has been generally damaged in a sum that is not yet ascertainable but in excess of \$10,000,000.00.

21. The acts of third party defendants Stewart, JM&S and Smith, and real parties in interest C, D, E, G, H, I, J, K, M and N, were done knowingly, maliciously, oppressively and contrary to express fiduciary confidential and special relationships between those third party defendants and Stone, and Stone is therefore entitled to punitive and/or exemplary damages in a sum of at least \$10,000,000.00 from each third party defendant.

SECOND CLAIM FOR RELIEF  
AGAINST ALL THIRD PARTY DEFENDANTS  
FOR FRAUDULENT CONCEALMENT

22. Stone incorporates herein by reference each and every allegation contained in paragraphs 1 through 10 and 12 through 19 of this Third Party Complaint as though fully set forth herein in full.

23. Stewart, Smith, JM&S, GAFC, and ASIC as successor in interest to GAFC, and real parties in interest, A, B, C, D, E, F, G, H, I, J, K, M and N, had a confidential special and fiduciary relationship with Stone by virtue of her recognized position as a claimant to the estate of Williams, Sr.

24. By virtue of that special, confidential and fiduciary relationship an obligation was imposed by law on the above named third party defendants and real parties in interest to disclose to Stone, or to her representatives and guardians, all pertinent facts, theories or other information necessary for her to properly evaluate and pursue her interest in the estate of Williams, Sr.

25. The above third party defendants and real parties in interest defrauded Stone by failing to disclose pertinent facts, theories, or other necessary information to Stone, or to her appropriate guardians or representatives, as alleged hereinabove at paragraphs 10 and 12 through 19 inclusive.

26. As a proximate result of the wrongful acts herein alleged, plaintiff has not received any portion of the estate of Williams, Sr. and has been generally damaged in a sum that is not yet ascertainable but in excess of \$10,000,000.00



27. The acts of the above named third party defendants and real parties in interest, were done knowingly, maliciously, oppressively and contrary to express fiduciary confidential and special relationships between those third party defendants and Stone, and Stone is therefore entitled to punitive and/or exemplary damages in a sum of at least \$10,000,000.00 from each third party defendant and real party in interest.

THIRD CAUSE OF ACTION  
AGAINST ALL THIRD PARTY DEFENDANTS  
FOR CONSPIRACY TO DEFRAUD

28. Stone incorporates herein by reference each and every allegation contained in paragraph 1 through 10 and 12 through 19 of the Third Party Complaint as though fully set forth herein.

29. Commencing in or about 1953 and continuing thereafter, Stewart, Smith, JM&S, as successor in interest to Stewart, GAFC, ASIC, as successor in interest to GAFC, and real Parties in interest A through N, knowingly and willfully conspired and agreed among themselves, and each of them, to conceal Stone's existence from the Court and to conceal pertinent information, facts and theories from Stone and her appropriate representatives and guardians as more specifically alleged herein at paragraphs 10, and 12 through 19 inclusive.

30. Co-conspirator defendants, and each of them, did the acts and things alleged in furtherance of the conspiracy and the above-alleged agreement.

31. As a Proximate result of the wrongful acts herein alleged, Stone has not received any Property or income

from the estate of Williams, Sr. and has, as a result thereof, been damaged in a sum that is not yet ascertainable but in excess of \$10,000,000.00.

32. The acts of said third party defendants and real parties in interest, were done knowingly, maliciously, oppressively and contrary to express fiduciary confidential and special relationships [sic] between those third party defendants and Stone, and Stone is therefore entitled to punitive and/or exemplary damages in a sum of at least \$10,000,000.00 from each third party defendant and real parties in interest.

FOURTH CLAIM FOR RELIEF  
AGAINST SURETIES  
FOR PAYMENT ON SURETY BOND

33. Stone incorporates herein by reference each and every allegation contained in paragraphs 1 through 10 of this Third Party Complaint as though fully set forth herein.

34. Stone has instituted an action for, in part, fraud and conspiracy to recover damages against Smith, Stewart and JM&S and real parties in interest as a direct and proximate result of their acts as administrator and/or attorneys for the estate of Williams, Sr.

35. Stone is informed and believes that at all times relevant hereto third party defendant GAFC and ASIC, as successor in interest of GAFC, and real party in interest A, B, F, and N, were a surety on the administrator's bond in connection with the estate of Williams, Sr.

36. In the event Stone recovers judgment against either Smith, Stewart or JM&S or real parties in interest,

third party defendant Gulf American Fire and Casualty Company and ASIC, as successor in interest, and real parties in interest A, B, F and N, are liable as surety and Stone hereby demands judgment therefor.

WHEREFORE, third party plaintiff, Catherine Yvonne Stone, prays for judgment as follows:

ON THE FIRST CLAIM FOR RELIEF

1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.
2. That Stone be entitled to share her proportionate interest in all property and income of the estate.
3. For general damages against third party defendants, and real parties in interest and each of them, for a sum not yet ascertainable but in no event less than \$10,000,000.00.
4. For Punitive and exemplary damages in the sum of \$10,000,000.00.

ON THE SECOND CLAIM FOR RELIEF

5. For general damages in a sum not yet ascertainable but in the sum of at least \$10,000,000.00.
6. For punitive and exemplary damages in the sum of at least \$10,000,000.00.

ON THE THIRD CLAIM FOR RELIEF

7. For general damages in a sum not yet ascertainable but in the sum of at least \$10,000,000.00.

8. For punitive and exemplary damages in the sum of at least \$10,000,000.00.

ON THE FOURTH CLAIM FOR RELIEF

9. For an order requiring Gulf American Fire & Casualty Company and American States Insurance Company, as successor in interest, or real parties in interest A, B, F and N, to compensate Stone for any money or property declared due and owing to her but not recovered on the First, Second and Third Causes of Action against any of the other third party defendants or real parties in interest.

DATED: \_\_\_\_\_

/s/ David Cromwell Johnson  
DAVID CROMWELL JOHNSON  
Attorney for Stone  
300 North 21st Street  
Suite 900, Title Building  
Birmingham, Alabama 35203  
(205) 328-1414

/s/ James A. Goodman  
JAMES A. GOODMAN  
Rudin, Richman & Appel, P.C.  
Attorney for Stone  
9601 Wilshire Boulevard  
Beverly Hills, California 90210

/s/ Keith Adkinson  
KEITH ADKINSON  
Attorney for Stone  
P.O. Box 70495  
Washington, D.C. 20024

Third Party Plaintiff demands a trial by struck jury on all issues.

/s/ David Cromwell Johnson  
DAVID CROMWELL JOHNSON

Third Party Plaintiff:

C/O Johnson Cory & McNamee, P.C.  
300 North 21st Street  
Suite 900, Title Building  
Birmingham, Alabama 35203

Third Party Defendants:

Estate of Robert B. Stewart  
Serve: June L. Stewart, Executrix  
3607 McCurdy Street  
Montgomery, Alabama 36111

Jones, Murray & Stewart, P.C.  
272 Commerce Street  
Montgomery, Alabama 36195

American States Insurance Company  
Serve: J.B. Ridgewell  
2525 E. South Boulevard  
Montgomery, Alabama 36116

Gulf American Fire & Casualty Company  
Serve: J.B. Ridgewell  
2525 E. South Boulevard  
Montgomery, Alabama 36116

Irene Smith  
610 North Barnett  
No. 2  
Dallas, Texas 75211

CERTIFICATE OF SERVICE

I do certify that I have mailed a copy of the foregoing on ail counsel of record by placing same in the United States mail, first class postage prepaid, on this the 24 day of October, 1986.

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/s/ David Cromwell Johnson  
DAVID CROMWELL JOHNSON

BALCH & BINGHAM  
Maury D. Smith  
Sterling G. Culpepper, Jr.  
David R. Boyd  
P.O. Box 78  
Montgomery, Alabama 36101

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**APPENDIX F-4**  
**IN THE CIRCUIT COURT FOR**  
**MONTGOMERY COUNTY, ALABAMA**

RANDALL HANK WILLIAMS,	)	
and WESLEY H. ROSE and ROY	)	
ACUFF, as Trustees in	)	
Liquidation for Stockholders of	)	
Fred Rose Music, Inc., and	)	
Milene Music, Inc., both	)	
Tennessee corporations,	)	
	)	
Plaintiffs,	)	
V.	)	CASE NO.
	)	CV-85-1316-PH
CATHERINE YVONNE STONE,	)	
	)	
Defendant.	)	
	)	
CATHERINE YVONNE STONE,	)	
	)	
Counterclaimant	)	
V.	)	
	)	
RANDALL HANK WILLIAMS,	)	
	)	
Counterclaim Defendant.	)	
	)	

**MOTION FOR SUMMARY JUDGMENT**

Come Randall Hank Williams and Wesley H. Rose and Roy Acuff as Trustees in Liquidation for the Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., Plaintiffs, and Randall Hank Williams as Counterclaim-Defendant, and move the Court to enter pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in Plaintiffs' favor for the relief demanded in their complaint; and in the Counterclaim-Defendants' favor dismissing the counterclaim against him. As grounds



for said motion, the moving parties say that there is no genuine issue as to any material fact and that the said Plaintiffs-Counterclaim Defendant is entitled to a judgment as a matter of law.

This motion is based upon the pleadings, upon the deposition of Catherine Yvonne Stone taken December 10, 1985, the deposition of Emma Jean Austin taken November 13, 1986, the deposition of Louise Pittman taken November 13, 1986, the deposition of Drayton Hamilton taken March 17, 1986, and the affidavit of Wesley Rose, attached. This motion is also based upon the following depositions taken in those proceedings pending in the United States District Court for the Southern District of New York, Civil Action No. 85 Civ. 7133 JFK, styled *Catherine Yvonne Stone, Plaintiff, v. Hank Williams, et al.*, Defendants; the deposition of Mary Louise Deupree taken June 16, 1986; the deposition of Nicholas T. Braswell taken June 18, 1986; the deposition of Fletcher Keith Atkinson taken September 18, 1986; and the deposition of Emma Jean Austin taken July 22, 1986. This motion is also based upon pleadings and orders contained in the court files of the Circuit Court of Montgomery County, Alabama, the Probate Court of Montgomery County, Alabama, and the Probate Court of Mobile County, Alabama, which said pleadings and orders are attached hereto as Exhibits "A" through "DD."

/s/ Maury D. Smith  
Maury D. Smith

/s/ Sterling G. Culpepper  
Sterling G. Culpepper

/s/ David R. Boyd  
David R. Boyd

OF COUNSEL:

BALCH & BINGHAM  
P. O. Box 78  
Montgomery, Alabama 36101  
(205) 834-6500

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon F. Keith Adkinson, Esquire, 1312 Eighteenth Street, N.W., Washington, D.C. 20036; James A. Goodman, Esq. and Vincent H. Chieffo, Esq., 9601 Wilshire Blvd., Penthouse, Beverly Hills, California 90210-5270; and David C. Johnson, Esq., 300 21st Street, N., 9th Floor, Birmingham, Alabama 35203, by placing same in the United States mail, postage prepaid and properly addressed on this the 17th day of November, 1986.

/s/ David R. Boyd  
OF COUNSEL

AFFIDAVIT

I, Wesley H. Rose, being first duly sworn avers as follows:

That I was the President and Chief Executive Office [sic] of Acuff Rose Publications, Inc. Red Rose Music, Inc. and Milene Music, Inc. from the time of the formation of those companies in 1963 until the liquidation in May, 1985. That I was the Partner and Chief Operating Officer of the music publishing partnerships which were the predecessors in interest to the above named corporations from 1955 until the formation of the corporations.

That, as the Chief Executive Officer for Fred Rose Music, Inc., a party to the litigation involving the Estate of Hank Williams and the Guardianship Estate of Randall Hank Williams, Jr. in the Circuit Court of Montgomery County, Alabama in and about 1967, I was aware of the existence of a child who had been born to Bobbie Jett and subsequently adopted. I was further aware that the late Hank Williams had executed a document relating to that child. I was unaware of the identity of the child or of her adoptive parents other than that they lived in the Mobile, Alabama area.

I know that, in December, 1967 and January, 1968, Judge Richard Emmett, then Judge for the Circuit Court for Montgomery, Alabama, considered and determined that the child, whom I now know to be using the name "Cathy Stone", had no interest in the Estate of Hank Williams or in the renewal copyrights of the musical compositions written, in whole or in part, by the late Hank Williams.

To the best of my knowledge, neither the child nor her parents at any time made any effort of any nature to challenge the decrees of the Circuit Court of Montgomery County, Alabama or otherwise assert any claim [sic] to the rights dealt with in those orders until the present litigation initiated in the later part of 1985. Prior to 1985, in reliance upon the judgments of the Circuit Court of Montgomery County, Alabama and the failure of Cathy Stone to challenge such judgments, I, on behalf of the companies I head, have dealt in commerce throughout the world with the copyrights and renewal copyrights of the songs written by the late Hank Williams, warranting the titles of Fred Rose Music, Inc. and Milene Music, Inc.

thereto, and, in May, 1985 selling and conveying those renewal copyrights together with the other copyrights of the companies to Opryland USA, Inc. In that sale, I warranted, together with Roy Acuff that we as trustees in liquidation for the stockholders of Fred Rose Music, Inc. and Milene Music, Inc., were lawful owners of one-half undivided interest in the compositions of the late Hank Williams and had the right to convey the same in reliance upon prior judgments of the Circuit Court of Montgomery County, Alabama and of the failure for many years of the person I now know as Cathy Stone to challenge the effect of those orders or otherwise claim rights inconsistent with those orders.

Further affiant saith not.

/s/ Wesley H. Rose  
WESLEY H. ROSE

Sworn to and subscribed to before me this 13th day of November, 1986.

/s/ Nancy Ann Riley  
NOTARY PUBLIC

My Commission Expires November 1, 1987

My Commission Expires: \_\_\_\_\_

**APPENDIX F-5**  
**IN THE CIRCUIT COURT FOR**  
**MONTGOMERY COUNTY, ALABAMA**

RANDALL HANK WILLIAMS,	)	
and WESLEY H. ROSE and	)	
ROY ACUFF, as Trustees in	)	
Liquidation for Stockholders	)	
of Fred Rose Music, Inc.,	)	
both Tennessee corporations,	)	CIVIL ACTION
Plaintiffs,	)	NO. CV-85-
	)	1316-PH
vs.	)	
CATHERINE YVONNE STONE,	)	
Defendant.	)	
CATHERIN [sic] YVONNE STONE,	)	
Counter-Claimant,	)	
vs.	)	
RANDALL HANK WILLIAMS,	)	
Counter-Defendant.	)	
CATHERIN [sic] YVONNE STONE,	)	
Third Party Plaintiff,	)	
vs.	)	
GULF AMERICAN FIRE &	)	
CASUALTY COMPANY; et al.,	)	
Third Party Defendants.	)	

**MOTION FOR SUMMARY JUDGMENT**

Now come Third Party Defendants Jones, Murray & Stewart and the Estate of Robert B. Stewart and move the Court to grant them a summary judgment on the grounds there is no issue of material fact that would support a

judgment for the Third Party Plaintiffs and that the Third Party Defendants are entitled to a judgment as a matter of law based on the pleadings and the depositions and exhibits filed in support of the motion for summary judgment of Plaintiffs Randall Hank Williams, Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for the Stockholders of Fred Rose Music, Inc. and Milene Music, Inc. For additional grounds, the Defendant Estate of Robert B. Stewart attaches hereto an affidavit of Walker Hobbie, Probate Judge of Montgomery County, Alabama that shows no claim was filed by Third Party Plaintiff Catherine Yvonne Stone within six months after the grant of Letters Testamentary to June L. Stewart as Executrix of the Estate of Robert B. Stewart.

WHEREFORE, THESE PREMISES CONSIDERED, these Defendants, Jones, Murray & Stewart and the Estate of Robert B. Stewart aver they are entitled to a summary judgment.

/s/ Robert C. Black  
ROBERT C. BLACK, Attorney  
 for Jones, Murray & Stewart  
 and the Estate of Robert B.  
 Stewart

OF COUNSEL:

HILL, HILL, CARTER, FRANCO,  
 COLE & BLACK  
 P.O. BOX 116  
 Montgomery, Alabama 36195  
 (205)834-7600

#### CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for Summary Judgment upon all

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counsel of record in this cause by hand delivering same to them in open court this 3rd day of February, 1987.

/s/ Robert C. Black  
OF COUNSEL

STATE OF ALABAMA)

MONTGOMERY COUNTY)

### AFFIDAVIT

Before me, the undersigned notary public in and for said County and State, personally appeared Walker Hobbie, Jr., who after first being duly sworn, says as follows:

My name is Walker Hobbie, Jr. I am Probate Judge of Montgomery County, Alabama. According to the records of the Probate Court of Montgomery County, Alabama, Letters of Administration on the Estate of Robert B. Stewart were issued to June L. Stewart as Executrix of the Estate of Robert B. Stewart on February 4, 1985. No claim was filed by Catherine Yvonne Stone within six months after the grant of Letters Testamentary to June L. Stewart, as Executrix of the Estate of Robert B. Stewart.

Done this the 12th day of January, 1987.

/s/ Walker Hobbie, Jr.  
WALKER HOBBIÉ, JR.  
Probate Judge

Sworn to the subscribed before me this 12th day of January, 1987.

/s/ Nellyne S. Wiston  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
3/4/89



IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS,	)	
et al.,	)	
Plaintiff,	)	
vs.	)	CASE NO.
CATHERINE YVONNE STONE,	)	CV-85-1316
Defendant.	)	
CATHERINE YVONNE STONE,	)	
Plaintiff,	)	CASE NO.
vs.	)	CV-85-1007
RANDALL HANK WILLIAMS,	)	
Defendant.	)	

MOTION FOR SUMMARY JUDGMENT

Comes now Irene Smith, a third party Defendant in this cause and respectfully moves this Court for a summary judgment in her favor pursuant to rule 56(b) of A.R.C.P. As grounds therefore and in support thereof, said Irene Smith avers:

1. There is no genuine issue as to any material fact in regard to the liability of Irene Smith.

2. The pleadings, exhibits and other documents filed in support of a motion for summary judgment by Randall Hank Williams, Wesley H. Rose and Roy Acuff are hereby adopted by this reference and those exhibits establish that there is no genuine issue as to any material fact in regard to the liability of Irene Smith and the said Irene Smith is entitled to a judgment as a matter of law.

Wherefore the Defendant, Irene Smith, prays that she be granted judgment in her favor and dismissed as a Defendant in this cause.

/s/ James F. Hampton  
JAMES F. HAMPTON,  
Attorney for Irene Smith

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing on the following persons by placing said copy in the United States mail, postage prepaid, and addressed correctly. Done this the 3rd day of February, 1987.

/s/ James F. Hampton  
JAMES F. HAMPTON

Sterling G. Culpepper  
Balch & Bingham  
P. O. Box 78  
Montgomery, AL 36101

Robert Black  
Hill, Hill, & Carter  
P. O. Box 116  
Montgomery, AL 36195-2401

James E. Williams  
Melton & Espy, P.C.  
P. O. Box 1267  
Montgomery, AL 36102

David Johnson  
300 21st Street, N.  
9th Floor  
Birmingham, AL 35203

James A. Goodman  
Rudin, Richman, & Appel, P.C.  
9601 Wilshire Boulevard  
Beverly Hills, CA 90210

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Keith Adkinson  
P. O. Box 70495  
Washington, DC 20024

Richard H. Frank, Jr.  
1200 One Commerce Place  
Nashville, TN 37219

Alan L. Shulman  
136 East 57th Street  
New York, NY 10022

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, \*  
and WESLEY H. ROSE and ROY \*  
ACUFF, as Trustees in \*  
Liquidation for Stockholders \*  
of Fred Rose Music, Inc., \*  
both Tennessee corporations, \*  
Plaintiffs, \*

vs. \*

CATHERINE YVONNE STONE, \*  
Defendant. \*

CATHERINE YVONNE STONE, \*  
Counter-Claimant, \*

vs. \*

RANDALL HANK WILLIAMS, \*  
Counter-Defendant. \*

CATHERINE YVONNE STONE, \*  
Third Party Plaintiff, \*

vs. \*

GULF AMERICAN FIRE & \*  
CASUALTY COMPANY; \*  
AMERICAN STATES INSURANCE \*  
COMPANY; JONES, MURRAY & \*  
STEWART, P.C.; IRENE \*  
SMITH; THE ESTATE OF \*  
ROBERT B. STEWART; et al. \*

Third Party Defendants. \*

CIVIL ACTION  
NO. 85-1316-PH

MOTION FOR SUMMARY JUDGMENT

COMES NOW Third Party Defendants, GULF AMERICAN FIRE & CASUALTY COMPANY and AMERICAN STATES INSURANCE COMPANY and move the Court to enter, pursuant to Rule 56(b) of the Alabama Rules of Civil Procedure, summary judgment in favor of Third Party Defendants, GULF AMERICAN FIRE & CASUALTY COMPANY and AMERICAN STATES INSURANCE COMPANY, against Third Party Plaintiff, CATHERINE YVONNE STONE, on the ground that there is no issue as to any material fact; and the Third Party Defendants, GULF AMERICAN FIRE & CASUALTY COMPANY and AMERICAN STATES INSURANCE COMPANY, are entitled to judgment as a matter of law, based upon the pleadings, and the depositions and exhibits filed in support of the Motion For Summary Judgment of Plaintiffs, RANDALL HANK WILLIAMS, WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., and Third Party Defendants, JONES, MURRAY & STEWART, P.C. and THE ESTATE OF ROBERT B. STEWART.

/s/ James E. Williams  
 JAMES E. WILLIAMS,  
 Attorney for Gulf  
 - American Fire &  
 Casualty Company and  
 American States  
 Insurance Company

OF COUNSEL:

MELTON & ESPY, P.C.  
 P. O. Box 1267  
 Montgomery, AL 36102  
 205/263-6621

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss has been served upon David Cromwell Johnson, 300 North 21st Street, Suite 900, Title Building, Birmingham, AL 35203, James A. Goodman, 9601 Wilshire Boulevard, Beverly Hills, California 90210, F. Keith Adkinson, P. O. Box 70495, Washington, D.C. 20024, Maury D. Smith, Sterling G. Culpepper, Jr., David R. Boyd, P. O. Box 78, Montgomery, AL 36101, Estate of Robert B. Stewart, June L. Stewart, Executrix, 3607 McCurdy Street, Montgomery, AL 36111, Jones, Murray & Stewart, P.C. 272 Commerce Street, Montgomery, AL 36195 and Irene Smith 610 North Barnett, No.2, Dallas, Texas 75211, by placing same in the United States Mail, postage prepaid on this the 2nd day of February, 1987.

/s/ James E. Williams  
OF COUNSEL

---

**APPENDIX G-1**  
**IN THE CIRCUIT COURT FOR**  
**MONTGOMERY COUNTY, ALABAMA**

CATHERINE YVONNE STONE,	)	
	)	
Third Party Plaintiff,	)	CASE NO.:
VS.	)	CV-85-1316-K
	)	
GULF AMERICAN FIRE &	)	
CASUALTY COMPANY;	)	
AMERICAN STATES	)	
INSURANCE COMPANY; JONES,	)	
MURRAY & STEWART, P.C.;	)	
IRENE SMITH; THE	)	
ESTATE OF ROBERT B.	)	
STEWART, etc.,	)	
	)	
Third Party Defendants.		

**NOTICE OF APPEAL**

Now comes the Third Party Plaintiff, Cathy Yvonne Stone, by and through her undersigned attorney and appeal to the Supreme Court of Alabama from an Order of the Circuit Court of Montgomery County, Alabama dated July 14, 1987, and made final on October 22, 1987, granting Third Party Defendants Motion For Summary Judgment.

/s/ David Cromwell Johnson  
DAVID CROMWELL  
JOHNSON  
Attorney For Third  
Party Plaintiff  
300 North 21st Street  
Suite 900, Title Building  
Birmingham, Alabama 35203  
205-328-1414



G-1.2

CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 30 day of November, 1987.

/s/ David Cromwell Johnson  
DAVID CROMWELL  
JOHNSON

---

**APPENDIX G-2**

**IN THE SUPREME COURT OF ALABAMA**

CATHERINE YVONNE STONE,	)	
Third Party Plaintiff/Appellant	)	
VS.	)	
GULF AMERICAN FIRE	)	
& CASUALTY COMPANY;	)	S.Ct.
AMERICAN STATES	)	No. 87-269
INSURANCE COMPANY;	)	
JONES, MURRAY & STEWART,	)	
P.C.; IRENE SMITH	)	
Third party defendants/Appellees	)	

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ON APPEAL FROM THE CIRCUIT COURT OF  
| MONTGOMERY COUNTY  
CIRCUIT CASE NO.: CV 87-1316

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BRIEF OF APPELLANT, CATHERINE YVONNE STONE  
ORAL ARGUMENT REQUESTED

---

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## G-2.2

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#### ISSUES FOR REVIEW

- I. WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE ADMINISTRATORS OF THE WILLIAMS ESTATE BREACHED NO DUTY BY INTENTIONALLY CONCEALING THE EXISTENCE AND IDENTITY OF A KNOWN NATURAL DAUGHTER AND POTENTIAL CLAIMANT OF THE INTESTATE.
- II. WHETHER CATHERINE YVONNE STONE PRESENTED EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT?

#### REQUEST FOR ORAL ARGUMENT

This case presents a fact never before the Court. This is an action of fraud on the court, alleging fraud covering a period of 34 years. It raises the issue of the duty of administrators to present the existence and identity of all children to the Probate Court, to allow the Probate Court to determine the rights of the intestate's children to the

estate. This issue has never been addressed directly by this Court before this case. The appeal is the culmination of many years of litigation, both within this case and the earlier estate case. Likewise it is a case of factual complexity. Oral Argument would assist in the just resolution of the issues.

/s/ Thomas W. Bowron, II  
THOMAS W. BOWRON, II

### STATEMENT OF THE CASE

This is an appeal from a third party complaint alleging fraud on the court, filed by Catherine Yvonne Stone. The proceedings leading up to this appeal are briefly set out here.

a. *Randall Hank Williams, et al vs. Catherine Yvonne Stone*

This is an action for declaratory judgment that Cathy Stone has no right or entitlement to any proceeds of the Estate of Hiram Hank Williams (hereinafter Williams, Sr.). (CR 135) The action is brought by Randall Hank Williams, the alleged son of Hiram Hank Williams, deceased (hereinafter Williams, Jr.), Wesley Rose and Fred Acuff as trustees in liquidation for the stockholders of Fred Rose Music Inc. and Milene Music, Inc., which corporations had acquired rights in the musical compositions of Williams Sr. (These plaintiffs have been collectively referred to as the "Williams Group.").

The Williams Group demanded that the court make the following determinations:

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1. Stone has never been adjudicated to be the child of Williams, Sr.
2. Stone is an adopted child and is therefore barred by §2617-6(e) from establishing paternity.
3. Stone is barred by statute of limitations, laches, waiver and estoppel from establishing paternity.
4. Court orders entered in the Matter of the Estate of Hiram Hank Williams, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 25,056 and The Matter of the Guardianship Estate of Randall Hank Williams, a minor, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 27,960, are binding on Stone and bar her from now establishing paternity.
5. Randall Hank Williams is the sole child of Williams Sr.

The original complaint (CR 1) was amended twice. (CR 13, 135) Stone filed a motion to dismiss the Second Amended Complaint on the ground that there was no justiciable controversy. (CR 174) The motion was denied (CR 296), and Stone filed a Petition for Writ of Mandamus with this Court. On September 28, 1986, this Court denied the writ. *Ex Parte Stone*, 502 So.2d 683 (Ala. 1986).

On October 11, 1986, Stone filed her Answer to the Second Amended Complaint and a Counterclaim. (CR 314)

b. *Catherine Yvonne Stone vs. Randall Hank Williams*

This is the counterclaim to the action for declaratory judgment brought by the Williams Group. (CR 314) Stone requests that this Court enter a judgment of paternity that

she is the daughter of Williams Sr. and is due her proportionate interest in the proceeds of the estate of Williams Sr. Further, she requests that the Court order Williams Jr. to account for all monies received from the estate, and that a constructive trust be imposed on Williams Jr. for all monies received from the estate.

Williams Jr. filed an answer to the Counterclaim. (CR 470)

*c. Catherine Yvonne Stone vs. Gulf American Fire & Casualty Company, et al*

This is the third party complaint filed by Stone within ten days of filing her Answer and Counterclaim. (CR 361) Originally named as third party defendants are Irene Smith (the administratrix of the estate of Williams, Sr. from 1955 to 1969), the Estate of Robert B. Stewart (Robert Stewart served as the attorney for the estate of Williams Sr. from 1953 until it was closed in 1975, and as administrator of the estate from 1969 to 1975), Jones Murray & Stewart (the partnership or professional corporation of which Stewart was a member), Gulf American Fire & Casualty Company (the insurance company which bonded the administrators of the estate of Williams Sr.), and American States Insurance Company (the successor in interest of Gulf American Fire & Casualty Company). The Estate of Robert Stewart was dismissed with prejudice on motion of Cathy Stone on March 25, 1987. (CR 961)

Count One of the Third Party Complaint, alleges that Smith, Stewart and the law firm of Jones Murray & Stewart through one of its partners, Robert B. Stewart, committed fraud on the court starting in 1953 by hiding the fact of Stone's existence from the Montgomery County



Probate Court and Circuit Court, thus precluding determination of her rights in the Estate of Williams Sr.

Count Two alleges that all third party defendants had a special, confidential and fiduciary relationship with Stone, and as a result of this relationship, there was a duty to disclose to her facts sufficient to evaluate and pursue her lawful interest in the Williams Sr. estate.

In Count Three, Stone alleges that all third party defendants engaged in a conspiracy to defraud her and the court, so that neither the court nor Stone could seek a determination of paternity and interest in the estate of Williams Sr.

Count Four is an action against the sureties only, for payment on the administrators, bond if Stone prevails against the administrators on any of the first three counts.

Gulf American and American States filed a motion to dismiss the complaint on the grounds that it fails to state a cause of action on which relief can be granted and that all claims against these third party defendants are barred by the statute of limitations. (CR 499)

Jones Murray & Stewart filed an answer raising as affirmative defenses failure to state a claim upon which relief can be granted, laches, statute of limitations, collateral estoppel, res judicata, waiver and estoppel. (CR 494)

Irene Smith filed an answer raising the same defenses as Jones Murray & Stewart. (CR 626)

All third party defendants filed a motion for summary judgment, based in part upon the Motion for Summary Judgment filed by Williams Jr. and Rose and Acuff

on the original complaint and the counterclaim. (CR 897, 899, 903)

On April 16, 1987, the Honorable Mark Kennedy heard oral arguments on all Motions for Summary Judgment, and on July 14, 1987, issued the "Final Order on Motions for Summary Judgment." (CR 1107) The trial court ruled against Stone on all issues and claims except one. The single issue left open was whether "Williams Jr. is the sole child of Williams, Sr." (CR 1119) The court set that issue for trial. The order was not a final order as to the other issues and claims.

d. *The trial on the original Complaint.*

On August 26, 1987, the Williams Group filed a Petition for Writ of Mandamus, Prohibition, or other Extraordinary Relief with this Court, raising as the issue whether the trial court, after entering the July 14th order, still had jurisdiction to proceed with a trial on the issue of biological paternity. The Petition was denied on September 1, 1987. *Ex Parte Williams, Rose & Acuff*, S.Ct.No. 86-1512, Sept. 1, 1987.

The case was set for trial on September 2, 1987. The parties proceeded to trial on the original complaint filed by the Williams Group. On October 26, 1987, Judge Kennedy entered his final order "that Hank Williams Jr. is not in fact the only natural child of Hank Williams, Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr" (CR 1165)

This appeal was filed on December 2, 1987. The appeal is from the trial court's July 14, 1987 order granting

the Third Party Defendants Motions for Summary Judgment. (CR 1166)

### STATEMENT OF THE FACTS

a. *The undisputed facts from the trial court's order*

Catherine Yvonne Stone adopts the undisputed facts set out in Judge Kennedy's "Final Order on Motions for Summary Judgment" (CR 1107), with annotations to the record on appeal:

On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. (CR 967) The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

After the birth of said child, both parties agree that it shall be placed with Mrs. W.W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting the mother.

In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

Williams, Sr. died intestate on January 1, 1953.

Lillian Williams Stone filed for Letters of Administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

Billie Jean Jones, "who states she is the widow.",  
Randall Hank Williams, Jr.,

Mrs. Irene Williams Smith, a sister

Elonzo H. Williams, father and

Lillian S. Stone, mother

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams, Sr./Jett agreement several months earlier.

Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

On or about January 28, 1953, (CR 970) Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father. (CR 970)

The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. (CR 972) An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. (CR 979) At that time an adoptive

parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. (CR 990) She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959 Stone was again adopted. (CR 991) Thus, a second adoptive/parent child relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads: (CR 1031-33)

D. CATHERINE YVONNE STONE - From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the

death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.

In response, Stewart wrote in pertinent part: (CR 1034-35)

None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

- a. Consider that by the adoption all rights under the renewal statute have been lost.
- b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.
- c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might



claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with the understanding of the facts by the Court.

It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr., then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. (CR 1036-1040) It was in those answers that the question of existence of and legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

In 1967 and 1968 Stone lived in Mobile with her adoptive parents, Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued: (CR 1067)

We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama Law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from the Hank Williams compositions . . .

The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. (CR 1069) In the Order the court found as follows:

The principal issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiram Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination (emphasis added).*

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiram Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence

heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .

. . . 2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. (CR 1073) In that order, the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

The Court is impressed with the argument of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimately offspring should be afforded adequate property rights. The common law is severe in calling such offspring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been . . . adopted . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings.

The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

... It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

... 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiram (Hank) Williams within the meaning of the Copyright Law.

Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama Law.

Following the death of Williams, Sr., Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams Sr.

It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that "the last two distributions to Randall ... were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." In April of 1974, Stewart advised counsel for Williams, Jr.

that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's "ancestry may well be reasonably obvious to her, and further trouble may ensue." The Estate of Williams, Sr. would be closed in August of 1975 without further incident relative to the issue of Stone's rights, if any, to a share in said estate.

b. *Appellant's additional facts*

Appellant adds these facts which were omitted from Judge Kennedy's final order:

The trial court failed to recite that part of the October 15, 1952 agreement between Williams, Sr. and Bobbie Jett wherein Williams, Sr. is referred to as "the father". (CR 967) Williams, Sr. signed the agreement as written.

During said two year period, that the child is in the custody of Mrs. Stone, both the *father*, Hank Williams and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him, until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; that is, during the winter months or school months, the child shall remain with Hank Williams and during the summer months or school vacation months, the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother. During the time the child is in the custody of the *father*, Hank Williams, the

mother shall have the right to visit it at reasonable times and at reasonable hours, during the time it is in the custody of the mother during the summer months, the *father* shall have the same privilege of visitation.

Catherine Yvonne Stone was not adopted until December 23, 1954, when she was almost two years old.

During the adoption investigation conducted by the Department of Pensions and Security in 1953, Irene Smith, sister of Williams Sr. was contacted by the social workers at her home in Virginia. She reportedly told the workers that "her deceased brother is the natural father" of Antha Belle Jett. (CR 981) She willingly provided information about Williams Sr. to the County social workers without denying that he was the father of the baby. (CR 982)

When Lillian Stone died in February 1955, Irene Smith reneged on her earlier promise to the social workers that she would take care of Cathy Stone if anything happened to Mrs. Stone. (CR 981, 983) She apparently had misgivings about her original promise and told the County workers that the child would be better off if adopted by someone unrelated to the Williams/Stone family. (CR 984-986) She had discussed these thoughts with Robert Stewart before her mother's adoption of the Jett child, telling him that it would be better for the child and its parents if they knew nothing of her origin at all. (CR 987) Irene Smith also related to the workers that she did not believe her father, Mr. Stone, would be able to care for the baby on his own.

Although Irene Smith was Administratrix of the Estate of Williams Sr. from 1955, she did not advise the



court of the existence of the Jett child until 1967. In 1967, she filed an answer to Audrey Williams petition and alleged that there may be "unknown minors who may have or claim any interest in said estate [the Williams Sr. estate]." (CR 1040) The only minor ever discovered by Drayton Hamilton, the Guardian Ad Litem appointed to represent the "interests of any other persons who may have an interest in or claim to the property or assets of the Williams Sr. estate or the copyrights or renewals" was a "girl child born to the said Bobbie W. Jett on or about January 6, 1953 in Montgomery, Alabama." (CR 1043) Prior to 1967, there had been no mention in the court records of any mention of Antha Belle Jett, Catherine Yvonne Stone or "a girl child."

#### ARGUMENT

- I. THE ADMINISTRATORS OF THE ESTATE OF WILLIAMS WERE CHARGED WITH A DUTY TO NOT WILLFULLY CONCEAL THE EXISTENCE AND IDENTITY OF A NATURAL CHILD AND POTENTIAL HEIR OF THE DECEASED.

The trial court granted the third party defendants' Motions for Summary Judgment on the ground that Catherine Yvonne Stone failed to state a cause of action of fraud on the court. Specifically, the trial court held:

As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had

been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the third party defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments purportedly occurred, full disclosure to the Court or to interested third persons would have been superfluous. Therefore, the Court is of the opinion that the third party complaint does not state a cause of action for which recovery can be had.

The trial court incorrectly held that there was no duty upon the administrators and third party defendants to disclose to the Court the existence and identity of Catherine Yvonne Stone as the daughter of Williams, Sr. The third party defendants and the trial court make several assumptions in reaching this conclusion. It is assumed that the trial court would not have determined the child to be an heir of the estate. It is further assumed that the child had little or no evidence to prove that she was the child and a legal heir. It is not the responsibility or the right of the administrators and the attorney for the estate to make a legal determination that a child is not an heir of the intestate – that privilege rests with the Court. Furthermore, the administrators should not assume the existence or nonexistence of evidence to support the claim for heirship of the child. Their obligation is to present the

child to the court so that evidence can be obtained and presented to the court for its determination on the issue. In these respects, the third party defendants have failed. In fact, the evidence is that the third party defendants intentionally and willfully concealed from the Montgomery County courts a child who was known by them to be the natural daughter of Williams, Sr.

The Supreme Court of Wisconsin, in *In Re Bailey's Estate*, 233 N.W. 845 (Wis. 1931), held that the administratrix had fraudulently withheld from the Probate Court the existence of an illegitimate child of the intestate. The illegitimate child filed a petition to set aside the final settlement and prove her claim. The court noted that there was evidence presented of a bastardy charge involving the intestate and the illegitimate child. Although the proceedings resulted in a written settlement, no documentation was produced. The mother of the child testified that the writing included a statement by the intestate that the illegitimate child was his child. The governing Wisconsin statute stated that an illegitimate could inherit from the father if the deceased "in writing signed in the presence of a competent witness, acknowledge himself to be the father of such child."

The administratrix testified that she did not name the child in her petition because "she did not think Ruth was an heir of the deceased." She further testified that "she did know that they were trying to make believe that Ruth was his child." The Court held:

The evidence in the case leaves the impression that Cora [the administratrix] must have known of the circumstance of the deceased having been arrested in the bastardy proceeding, that she

must have known that he settled, and that she also must have known that it was generally understood in that community that Ruth was regarded as the illegitimate child of the deceased. She says she knew "that they were trying to make believe she was his child." We have no difficulty in reaching the conclusion that she was conscious of the true situation and that it was her duty to reveal it to the court. Her omission to inform the court of the facts was passive, if not active, fraud.

*In Re Bailey's Estate*, 238 N.W. at 848.

Likewise, in both *In Re Flowers*, 493 So.2d 950 (Miss. 1986) and *In Re King*, 501 So.2d 1120 (Miss. 1987), the Supreme Court of Mississippi recognized and applied the very duty which the appellant today asks this Court to pronounce. See also *Succession of Hearn*, 412 So.2d 692 (La. App. 1982)

In the *Matter of the Estate of John Walden Flowers*, 493 So.2d 950 (Miss. 1986), the Supreme Court of Mississippi *ex mero moto* addressed the "glaring" infirmity of a petition for letters which failed to disclose the known natural daughter of the deceased. That Court observed that the administrator has negligently, if not intentionally, failed to disclose the existence of the natural daughter of the deceased. The case was remanded to the trial court to determine whether the omission was intentional and thus fraudulent. The Court noted that if the omissions were occasioned by fraud prior notice publications would be annulled.

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1) Footnote two of *In Re King*, 501 So.2d 1120 (Miss. 1987) indicates that the daughter in *Flowers* was illegitimate.

Speaking to the duty owed potential heirs by the administrator, the *Flowers* Court noted:

Obviously, the law cannot require an administrator to conduct extensive genealogical research, but where, as here, he has actual knowledge that another person with a claim to heirship exists, the situation is very different. By failing to disclose Mrs. Campbell's existence to the court, Deshazer made a serious misrepresentation.

Whether or not the misrepresentation amounted to a fraud on the court is a question of fact unsuitable for resolution here.

*Id.* at 951.

More dramatic than the scenario presented in *Flowers* is that the administrators in the case at bar, with the help of a lawyer, knew of the existence of the natural child of the deceased, but nevertheless, actively and intentionally concealed her existence and identity from the Court. Under these facts, how can it be seriously postulated that no duty to disclose existed; particularly when one considers that the relationship between an administrator and heirs as well as creditors, has been recognized as a fiduciary relationship. 33 C.J.S. Executors and Administrators § 142 (1942)

Directly on point is the case of *In Re King*, 501 So.2d 1120, (Miss. 1987). Therein, the Supreme Court of Mississippi expressly recognized that "an administrator is under an affirmative duty to disclose to this Court the existence of known potential heirs and claimants. *King*, at 1123. The *King* Court reversed the findings of the lower court and held that an illegitimate child of the deceased, who was fraudulently hidden from the Court by the

administrator, was not barred by any statutory time restrictions. While the Mississippi court ultimately flip flopped on these positions in the case of *Leflore v. Coleman*, [Miss. M.S. 56631, 56677 February 24, 1988] the appellant considers the reasoning set forth in *Flowers* and *King* to be eminently correct.

The policies of timely and just disposition of estates as well as ensuring certainty of title which passes through inheritance, are equally served by requiring the administrator to disclose both known heirs and potential heirs; at the very least the known children of the deceased. Ensuring that all potential litigants are present at the initial stages of administration obviously provides all with a just and fair opportunity to settle issues thereby forestalling later claims to heirship and clouds upon title.

Further, an administrator is not vested, nor should be vested, with the right to determine heirship *extra* judicially. For instance, consider the instance where a child is not disclosed because the administrator assumes the child is either not of the blood of the deceased, or if so, is illegitimate. The child is thereafter precluded from establishing a blood relationship; written acknowledgment; a marriage and recognition, or a prior successful paternity action. To find no duty on the administrator to disclose known illegitimates is to allow the administrator, in many cases a non-lawyer, to judicially resolve all issues presented by a quagmire of facts and alternative theories of heirship.

Lastly, to find no duty to disclose known potential heirs is to invite and encourage fraud on the Court and estates. Counsel can envision no other area of the law

where fraud is either allowed, encouraged, or as in this case, rewarded.

The common sense approach of notifying potential heirs is embedded within certain provisions of the applicable Probate Code. For example, under Code of Alabama 1940 Title 61 § 48, an executor is required to notify the widow and next of kin before an application for probate could be heard. This requirement was engrafted so to allow all "interested parties", who would possibly inherit under intestary, an opportunity to contest the will. *Knox v. Paull*, 95 Ala. 505, 11 So. 156. Should an intestate preceding be more restrictive in allowing "interested parties" to assert a claim.

In sum, while not expressly set out by statute in this state, a duty to disclose known potential heirs is recognized by other states, sound in its policy, and embedded implicitly within the applicable Alabama Code. The trial court erred in finding to the contrary. This Court should not now be reluctant to express such a duty and thereby thwart the fraud and injury which has befallen Catherine Yvonne Stone.

II. CATHERINE YVONNE STONE DID PRESENT EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT.

A fraud on the court is a separate cause of action recognized in Alabama. In *Duncan v. Johnson*, 338 So.2d 1243 (Ala. 1976), the plaintiff filed suit in equity and alleged a misrepresentation of fact to the court. This Court recognized that the plaintiff had stated a cause of



action even though the action was not a direct attack on an earlier judgment.

Even though a decree is based upon the false averment of a material fact and false testimony as to a material fact, it is not necessarily subject to vacation other than by a direct attack upon it in due course. For the decree in this case to be subject to successful attack, the legal fraud from which it resulted must consist of more than false pleading and false evidence, as repugnant as each is to the administration of justice. Otherwise, an action brought to invalidate the judgment or decree would merely constitute a retrial of the issues between the parties or their successors in interest. Nevertheless, as here, when fraud constitutes the root of the evil, when it consists of an imposition upon the court of a case over which without the fraud it would have no jurisdiction, when without the fraud the case would have no germ of life as a judicial proceeding, and the fraud from its inception to its perpetration is that of the one procuring the judgment, the one injured thereby is not necessarily limited to a direct attack upon it.

But where the jurisdiction of the court of law is acquired by the fraudulent concoction of a simulated cause of action, the fraud itself to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault or neglect in the premises.

*Duncan v. Johnson*, 338 So.2d at 1250-51, quoting *Bolden v. Sloss-Sheffield Steel & Iron Company*, 215 Ala. 334, 335, 110 So. 574-575 (1925).

The only fraud which will support the action is "extrinsic" fraud.

The fraud here available must be what is termed extrinsic; that is, such as was instrumental in procuring the rendition of the decree, or collateral to the matter or question which was tried and determined by the judgment in question; *but when a party is prevented from asserting his rights by the fraud of his opponent, equity will interfere.* (emphasis added)

*Anderson v. Anderson*, 250 Ala. 427, 430, 34 So.2d 585 (1948).

The Alabama courts have succinctly and repeatedly defined the difference between extrinsic fraud and intrinsic fraud, and the consequences of each.

The jurisdiction extends to the vacation of the judgments or decrees of courts which have been *procured* by fraud. But the final judgment or decree of a court of competent jurisdiction is impeachable only for *actual fraud* in its procurement.

It seems to be a well-established doctrine that the acts for which a court of equity will set aside a judgment of a court of competent jurisdiction have relation to frauds *extrinsic or collateral* to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered. (emphasis in original)

*Hogan v. Scott*, 186 Ala. 310, 313-14, 65 So. 209 (1914).  
More specifically:

If a cause of action is vitiated by fraud, this is a defense which ought to be interposed to the granting of the judgment or decree, and, unless the interposition of this defense is prevented by fraud, it cannot be asserted against he [sic] judgment; for judgments are impeachable for those frauds only which are extrinsic to the merits of the case, and by which the court has been imposed upon, or misled into a false judgment. The fraud must be practiced in the rendition or procurement of the judgment or decree.

*Rittenberry v. Wharton*, 176 Ala. 390, 401-02, 58 So. 293 (1912). Extrinsic fraud can be proven by showing that the complainant was prevented from discovering the defense of the opposite party, or discovering the action, by the conduct of the opposing party. *Eskridge v. Brown*, 208 Ala. 210, 94 So. 353, 354 (1922).

It may be stated as a general rule that where the action of the successful party in probate proceedings, in concealing or failing to disclose to the court the existence of a person interested in the estate, amounts to fraud of any kind, and the defrauded person has thereby been prevented from learning of the proceeding or asserting his claim therein, the fraud is extrinsic, rather than intrinsic, and such person is entitled to equitable relief against the decree of the probate court.

Annot., Concealment of or failure to disclose existence of person interested in estate as extrinsic fraud which will support attack on judgment in probate proceedings, 113 A.L.R. 123.

To state a cause of action of fraud on the court, the plaintiff must allege that the defendants committed a fraudulent act, that the fraud was extrinsic or collateral to the matter tried by the court, and the plaintiff is without

fault or neglect on his part. Plaintiff has presented evidence to all these elements.

As early as September 1952, and certainly by the time the Petition for Letters of Administration were filed in January 1953, Lillian Stone knew that the baby conceived by Bobbie Jett was William Sr.'s child. She had witnessed the signing of the October 15, 1952 agreement between Williams Sr. and Bobbie Jett in Robert Stewart's office. (CR 998) Less than four months later, on January 28, 1953, Lillian Stone reported to Public Welfare that the child she wanted to adopt was her deceased son's child. (CR 970)

When Lillian Stone was appointed administratrix of the Estate of Williams Sr., and throughout her service in such capacity, she knew that Cathy Stone was the natural daughter of Williams Sr. Yet, she did not list Cathy Stone on her petition for letters of administration, did not retain separate counsel or ask for a guardian ad litem for the child, and did not reveal her existence, identity or relationship to the court. As the administratrix of the estate, she had a duty to report all potential heirs or claimants and interested parties to the court. It was not her decision to determine who was in fact a legal heir.

At the time of the filing of the petition for letters of administration, Catherine Yvonne Stone was not adopted. The only relationship which existed was one between Stone and Williams, Sr. and Bobbie Jett. She was not adopted by anybody until December 23, 1954.

Third party defendants argue that they had no duty to name Catherine Yvonne Stone on the petition because she was not a legal heir under the law as it existed in 1953. However, Lillian Stone as the administratrix listed

Billie Jean Jones, "who states she is a widow" in the petition as an heir. If Lillian Stone was obligated to name Billie Jean Jones, who had at most a potential claim, then she was also obligated to identify the Jett child in the petition. The determination of who was a widow and who was a child was for the court. The only obligation that the administratrix had was to put all potential claimants before the court. Then the court could give notice to them to prove their claim. Billie Jean Jones was given the opportunity to prove she was the widow, but the child was given no opportunity to prove her relationship.

Robert Stewart, attorney for the estate of Williams, Sr. from the date it was opened until it was closed, and administrator from 1969 to the closing in 1975, also knew throughout the duration of the estate that Cathy Stone was the daughter of Williams, Sr. Evidence of Robert Stewart's knowledge includes the fact that he drafted and witnessed the October 15, 1952 agreement between Williams, Sr. and Bobbie Jett, wherein Williams, Sr. is referred to as the "father" of the child carried by Bobbie Jett. (CR 994-96)

Then, in 1962, there was the correspondence between Robert Stewart and Harold Orenstein referenced by the trial court in its findings of fact, which indicates that Robert Stewart believed Cathy Stone to be the daughter of Williams, Sr. (CR 1034-35)

Finally, in 1967, Robert Stewart, as attorney for Irene Smith, then administratrix of the estate of Williams Sr. and the legal guardian of Williams, Jr., filed two answers in the Circuit Court of Montgomery County, Alabama, in which he raises the possibility of other minors who may

have an interest in the Williams, Sr. estate. The only minor ever discovered was Catherine Yvonne Stone.

Although Robert Stewart knew of the existence, identity and relationship of Catherine Yvonne Stone to the estate of Williams, Sr., he too failed to inform the court of her identity and existence until 1967.

Irene Smith, sister of Williams, Sr. and administratrix of the estate from 1955 to 1969 also failed to identify the child to the court until 1967, although she too was aware of the existence of the child and her relationship to Williams, Sr. Her letter of April 1953 clearly indicates her intent that the child never be found or connected to the family. (CR 987)

Finally, even after the 1967 court order, the estate, through its attorney, Robert Stewart and its administrators, Irene Smith and Robert Stewart, continued to divide the proceeds, giving half to Williams, Jr. and half to the Jett child, in case she should make her claim. Robert Stewart continued to worry that the fraud would be discovered and as late as 1974 was discussing it with other lawyers involved in these matters. They knew the order in 1967 was procured through fraud and never wanted that fact discovered. No one ever told the child that she had missed the opportunity to prove her claim in 1953, that her rights had been adjudicated in 1967 to her detriment, or that her identity had been intentionally concealed from her and the court for years.

The material elements of the cause of action of fraud on the court are a fraudulent act, fraud which is extrinsic or collateral to the matters determined or tried by the court, and no fault or neglect on the part of the plaintiff.

Catherine Yvonne Stone has presented evidence on all the material elements of the cause of action.

The third party plaintiff, Catherine Yvonne Stone, has stated a cause of action for fraud on the court and has presented evidence to support all material averments of the claim. It was error for the trial court to have granted the Motions for Summary Judgment filed by the third party defendants.

#### CONCLUSION

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Appellant, Catherine Yvonne Stone, respectfully requests that this Honorable Court reverse the judgment of the Circuit Court of Montgomery County entered on the Third Party Complaint and remand the cause for further proceedings.

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CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 30th day of March, 1988.

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89-1538  
No. \_\_\_\_\_

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIO, JR.  
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In The  
Supreme Court of the United States  
October Term, 1989

RANDALL HANK WILLIAMS,  
*Petitioner,*  
vs.

CATHERINE YVONNE STONE,  
*Respondent.*

On Petition For Writ Of Certiorari  
To The Supreme Court Of Alabama

PETITION FOR WRIT OF CERTIORARI

APPENDIX TO PETITION  
VOLUME II

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**IN THE SUPREME COURT OF ALABAMA**  
**No. 87-269**

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CATHERINE YVONNE STONE,  
Appellant,

vs.

GULF AMERICAN FIRE & CASUALTY  
COMPANY, et al.,  
Appellees.

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ON APPEAL FROM THE  
CIRCUIT COURT OF MONTGOMERY  
COUNTY, ALABAMA

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**BRIEF AND ARGUMENT OF APPELLEE**  
**JONES, MURRAY AND STEWART**

---

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## STATEMENT OF THE CASE

This is an appeal from what began as an action for declaratory judgment that Cathy Stone has no right or entitlement to any proceeds of the Estate of Hank Williams, Sr. The complaint originally asks the court to adjudicate that Stone has never been adjudicated to be the child of Williams, Sr., that Stone was adopted and therefore barred by Title 26-17-6(e), 1975 Code of Alabama, from establishing paternity, that Stone is barred by laches waiver and estoppel from establishing paternity, and that previous court orders are binding on Stone and bar her from establishing paternity. The bill for declaratory judgment further asks that Randall Hank Williams, Jr. be established as the sole child of Williams, Sr. The original complaint was amended twice (C.R. 1, 13 and 135). Stone attempted to have the complaint dismissed by filing a motion to dismiss on the grounds there was no judicial controversy (C.R. 174). The motion was denied (C.R. 296). Stone filed a petition for mandamus with the Supreme Court of Alabama and on September 26, 1986 the mandamus was denied. See *Ex Parte Stone*, 502 So.2d 683 (Ala. 1986). Following these proceedings Stone then filed a third party complaint against the Estate of Robert Stewart which was dismissed with prejudice on Stone's own motion (C.R. 961). The third party complaint continued against the lawfirm of Jones, Murray and Stewart. The third party complaint was filed in October, 1986. Judge Kennedy, Circuit Judge in Montgomery County, Alabama,

ruled on the motion for summary judgment filed by Jones, Murray and Stewart on July 14, 1987. Judge Kennedy ruled that the motion of Jones, Murray and Stewart was well taken and dismissed the third party complaint against that lawfirm.

This appeal followed.

#### STATEMENT OF THE FACTS

The facts are set out in Judge Kennedy's July order styled "Final Order on Motions for Summary Judgment" (C.R. 1107). Jones, Murray and Stewart presents the following chronological review of the facts in hopes that it will aid the Court in understanding the history of the litigation. A review of facts and procedural history of the case is further set out in *Ex Parte Stone*, 502 So.2d 683 in an opinion rendered by Justice Adams.

Defendant/Third Party Plaintiff Catherine Yvonne Stone (herein referred to as "Stone") was born in Montgomery, Alabama on January 6, 1953 to Bobbie W. Jett. At brith, [sic] she was named Antha Belle Jett. Stone's mother left her with Mrs. Lillian Williams Stone shortly after her birth. (Austin Dep. of 7/86).

On or about January 28, 1953, Mrs. Lillian Williams Stone contacted the Montgomery County Department of Public Welfare relative to adopting Stone. An Interlocutory Order of Adoption granting temporary custody of Stone to William Wallace Stone and Lillian Williams Stone was issued on September 21, 1953, on which date the Montgomery County Department of Public Welfare began

supervision of Stone and her case. After continuing supervision by the said Department of Public Welfare, a Final Decree of Adoption was entered on December 23, 1954, establishing an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Stone. Stone's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. On or about April 22, 1955, pursuant to the petition of her adoptive father, William Wallace Stone, Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama.<sup>1</sup> (Austin Dep. of 7/86). Stone was placed in the home of Mrs. Ilda Mae Cook as a foster child.

Later, on February 21, 1956, preliminary to possible adoption, Stone was placed by the Alabama Department of Pensions and Security with George Wayne Deupree and Mary Louise Sims Deupree of Mobile, Alabama. (Austin Dep. of 11/86, Pl.). This was initially a foster home placement. Pursuant to a Petition for Adoption of Child filed by Mr. and Mrs. Deupree on December 23, 1957, an Interlocutory Order was entered by the Probate Court of Mobile County, Alabama on March 7, 1958, granting temporary custody of Stone to Mr. and Mrs. Deupree. On April 23, 1959, a Final Decree of Adoption was entered by the said Probate Court, establishing an

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<sup>1</sup> Since 1955, officials of the State of Alabama Department of Pensions and Security (Now Human Resources) have been aware of Stone's background, including claims that she might be the child of Hank Williams. (Austin Dep. of 11/86, p. 22-23; Pittman Dep., p. 12)

adoptive parent/child relationship between George Wayne Deupree and Mary Louise Sims Deupree and Stone. Stone's name was changed to Cathy Louise Deupree.

In 1967 proceedings were commenced in two (2) actions then pending before the Circuit Court for Montgomery County, Alabama. Mr. Stewart delivered to the Court the 1952 contract between [sic] Williams, Sr. and Mrs. Jett. He had already given copies of the document to those people or their attorneys who might have been affected (Stewart testimony September, 1967, p. 74, R. p. 996). Audrey Mae Williams, the mother of Randall Hank Williams, filed a petition seeking a final settlement in the case entitled, "In the matter of the Estate of Hiram 'Hank' Williams, Deceased," Case No. 25056 (the "Estate Proceeding"). Mrs. Williams and Randall Hank Williams filed a Petition Seeking to Vacate Decree of March 19, 1963 and for Order Requiring Guardian to Make Accounting and Transfer Assets in the case entitled "In the Matter of the Guardianship Estate of Randall Hank Williams, a Minor," Case No. 27960 (the "Guardianship Proceeding"). In her response to the petitions filed in each proceeding, the question of the existence and legal rights of Stone and any other unknown heirs of Hiram Hank Williams was raised by Mrs. Irene Smith, the Administratrix of the Estate and the Alabama Guardian of Randall Hank Williams. In each proceeding, the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interests of any minor person or persons who might have an interest in the matters involved in the proceedings. In furtherance of his appointment, the



Guardian Ad Litem fully participated in both proceedings, and vigorously sought to establish that Stone was the child of Williams and entitled to share in the estate.

Stone's second adoptive parents, Mr. and Mrs. Deupree, were aware of these proceedings through newspaper publicity and were notified of both proceedings by the Mobile County Department of Pensions and Security and the Alabama Department of Pensions and Security. They came to Montgomery and Mrs. Deupree talked with Drayton Hamilton, who tried to persuade her that it would be in Stone's best interest if she would pursue Stone's claim against Williams' estate. The Deuprees were not interested and "did not want her labeled as a bastard and illegitimate child of Hank Williams." (Deupree Dep. pp. 18-25).

On December 1, 1967, the Circuit Court of Montgomery County issued an order in the Estate Proceeding, finding and concluding that Stone had no right of inheritance from Hiram "Hank" Williams and no right to receive any part of his estate. The Court went on to find that Randall Hank Williams was the sole heir and only distributee of the Estate of Hiram "Hank" Williams.

On January 30, 1968, after lengthy evidentiary proceedings, the Circuit Court for Montgomery County, Alabama entered an order in the Guardianship Proceeding which, among other things, found and concluded that Stone was not an heir of Hiram "Hank" Williams and had no rights in the copyrights in musical compositions written in whole or in part by Hiram "Hank" Williams or in the rights to renew those copyrights. (R. p. 1076).

Neither the December 1, 1967 order in the Estate proceeding nor the January 30, 1968 order in the Guardianship Proceedings were appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Stone's adoptive parents, the Deuprees, being aware of the above orders, expressed a desire, through their attorney, that such orders not be appealed. The orders thereafter became final orders pursuant to applicable Alabama law.

From and after the death of Hiram "Hank" Williams, Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in interest, accounted to and paid to the Estate of Hiram "Hank" Williams, royalties arising from the usages of the songs composed by Hiram "Hank" Williams. After the closing of the estate, and in reliance on the above orders of the Court in the Estate Proceeding and the Guardianship Proceeding, Fred Rose Music, Inc. and Milene Music, Inc. paid such royalties to Randall Hank Williams as the sole heir of the estate of his father. (Rose affidavit).

In 1963, Randall Hank Williams, at the time a minor, and Fred Rose Music, Inc. entered into a contract and agreement with regard to the renewal rights of copyright in all the musical compositions written and/or composed by Hiram "Hank" Williams. The Court, in the Guardianship Proceeding, found that the contract entered into in 1963 was in the best interests of the ward, Randall Hank Williams, and further that Hiram "Hank" Williams' sole heir and distributee, Randall Hank Williams, was the only heir having an interest in the renewal rights for the copyrighted musical compositions and works of Hiram "Hank" Williams.

Since the final orders of the Court in the Estate Proceeding and the Guardianship Proceeding, all parties have relied on those orders in the conduct of their business relative to the copyrights and estate of Hiram "Hank" Williams, believing and proceeding on the basis that the Court's orders finally and unequivocally established that Stone had no rights in or to the copyrights and the estate. (Rose affidavit).

On or about November 12, 1968, Stone's adoptive father, George Wayne Deupree, contacted the Alabama Department of Pensions and Securities and was advised [sic] that Stone's natural mother's name was Bobbie Webb Jett and was reminded that Stone had been previously adopted by her alleged grandmother. (Austin Dep. of 11/86, Pl. Ex. 4-7 through 4-10; Pittman Dep., p. 18).

In or about January, 1974, in connection with Stone reaching the age of majority, Stone's adoptive mother, Mrs. Deupree, visited Stone at the University of Alabama. *During this visit, Mrs. Deupree told Stone that Hank Williams was Stone's biological father.*<sup>2</sup> (Deupree Dep., pp. 30-32). Mrs. Deupree also advised Stone that the Circuit Court of Montgomery County was holding certain funds for her

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<sup>2</sup> Mrs. Deupree testified that she had known since 1967 that Stone was the daughter of Hank Williams, having been so advised by Mrs. Pittman at the Department of Pensions & Security (Deupree Dep., pp. 19, 27) and by Drayton Hamilton (Deupree Dep., pp. 20, 27). Mrs. Deupree did not want Stone labelled as an "illegitimate child of Hank Williams" (Deupree Dep., p. 22), but decided in 1974, when Stone turned twenty-one, to tell Stone about Stone's relationship to Hank Williams (Deupree Dep., pp. 29-32). At the same time, Mrs. Deupree told Stone about the 1967 court proceedings (Deupree Dep., p. 33).

from the estate of Lillian Williams Stone (Deupree Dep., p. 29). On or about January 10, 1974, Stone drove to Montgomery and picked up a check from the Circuit Court in an amount in excess of \$2,000.00. (Deupree Dep., pp. 10-11, 29-33; Stone Sep. [sic] pp. 75-78). In the year following such conversation, and the receipt of the Lillian Williams Stone estate funds, Stone read a book on the life of Hank Williams entitled *Sing A Sad Song*. (Stone Dep., pp. 108-109). The book contains specific reference to the Estate Proceeding, the Guardianship Proceeding, an illegitimate child allegedly fathered by Hiram "Hank" Williams who had been adopted, and the names of other individuals who were significant in the life of Hiram "Hank" Williams.

Extensive newspaper articles and oter [sic] media coverage exist revealing the substance of the Estate Proceeding and the Guardianship Proceeding, including the existence of the written contract<sup>3</sup> executed by Hiram "Hank" Williams mentioning a child born to a woman in Montgomery, Alabama. (Austin Dep. of 11/86; Pl. Ex. 3-5 to 3-9). Other articles published about the life and death of Hiram "Hank" Williams, gave significant information relative thereto and naming significant individuals with knowledge thereof. Such media coverage and newspaper articles are, and since their inception have been, a matter

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<sup>3</sup> Although Stone's attorney, Keith Adkinson, went through the pretense of petitioning the Circuit Court for an order permitting Stone to retrieve this contract from sealed court files, he later admitted he had the document all along, having earlier "surreptitiously" obtained it from courthouse files. (Adkinson Dep., pp. 360-409).

of public record which Stone could have examined at any time.

On or before August 25, 1976, Stone told Nicholas T. Braswell, III that someone had told her that they thought Stone was the daughter of Hiram "Hank" Williams. Subsequent to such conversation, Mr. Braswell contacted Judge Richard P. Emmet (a Hank Williams aficionado and the judge who presided over the Estate Proceeding and the Guardianship Proceeding) on Stone's behalf; and on or about August 20, 1976, Braswell telephoned Stone and advised Stone that Judge Emmet would like to see, or was interested in seeing, her. (Braswell Dep., p. 5-12). Stone did not contact Judge Emmet prior to his leaving the bench in 1978. (Stone Dep., pp. 192-193).

On October 17, 1979, Stone had a meeting with Ms. Emogene Austin of the Alabama Department of Pensions and Securities. Stone advised Ms. Austin that Stone knew her identity and that Stone had been to the Archives and had read newspaper clippings about Hiram "Hank" Williams and that Stone knew that there had been mention of her in the newspapers at the time of the Estate Proceeding and the Guardianship Proceeding. According to Austin, Stone stated at that time that she did not "want anyone to ever link her with (her) alleged father." Ms. Austin reported at the time that the apparent purpose for Stone's meeting was to verify what she *already knew* and to gain assurance that the record of her adoption and alleged parentage was not accessible to others. (Austin Dep. of 11/86, pp. 25-34; Pl. Ex. 5-40, 5-41).

On or before December 1, 1980, Stone contacted and was contacted by Ms. Mary Lee Stapp, and Ms. Louise

Pittman, representatives of the Alabama Department of Pensions and Securities and was told that her original given name was Antha Belle and how to obtain her original Certificate of Birth, which Stone subsequently obtained on or before March 26, 1981. (Austin Dep. of 11/86; Pl. Ex. 5-41-43).

On or before December, 1980, Stone's adoptive father, George Wayne Deupree, telephoned and told Stone the names of individuals who participated in her adoption process and the Estate Proceeding and Guardianship Proceeding. On December 4, 1980, Mr. Deupree sent Stone a legal document relative to the above and newspaper clippings relative to the Estate Proceeding and Guardianship Proceeding. (Stone Dep., pp. 80-82).

The pleadings, briefs and orders of the Estate Proceeding and the Guardianship Proceeding are, and since their inception have been, a matter of public record which Stone could have examined at any time, but which Stone did not attempt to examine until after December, 1980.

Stone filed the original action herein against Dr. Forrest Ludden, et al. on July 1, 1985. On August 5, 1985, Stone's attorneys wrote to Hank Williams, Jr. and Acuff-Rose/Opryland advising them of Stone's claimed interest in Williams' copyrights and advising, "We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father." On September 12, 1985, Stone filed an action in the United States District Court for the Southern District of New York, Civil Action No. 85. Civ. 7133 JFK, relative to her alleged interest in the renewal rights in the copyrights of musical compositions written in whole or in

part by Hiriam "Hank" Williams. On or about November 14, 1985, Plaintiffs filed the Second Amended Complaint in this action. After various motions and appeals were exhausted, Stone filed her third party complaint in this action on or about October 24, 1986.

## ISSUES PRESENTED FOR REVIEW

### I.

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT FOR JONES, MURRAY AND STEWART WHEN THE EVIDENCE IS BEYOND CONTRADICTION THAT MR. STEWART DID NOT BREACH ANY DUTY TO THIRD PARTY PLAINTIFF.

### II.

HAS THE STATUTE OF LIMITATIONS RUN ON THIRD PARTY PLAINTIFF'S FRAUD COUNTS FILED OCTOBER 24, 1986 WHERE THE UNDISPUTED EVIDENCE SHOWS THIRD PARTY PLAINTIFF KNEW FACTS THAT WOULD HAVE LED TO THE DISCOVERY OF THE ALLEGED FRAUD AS FAR BACK AS AT LEAST 1974 AND WHERE HER RIGHTS HAD BEEN FULLY DETERMINED IN 1967.

## ARGUMENT

This is an appeal from the grant of a motion for summary judgment dismissing a so called third party complaint against Jones, Murray and Stewart and others. The basis of the claim against Stewart, and consequently his lawfirm, was that Stewart committed fraud against



Cathy Stone in 1953 through 1967. The Court granted Jones, Murray and Stewart's motion on July 14, 1987 after which the lawfirm had nothing further to do with the case. After hearing on September 2, 1987 the Court rendered its final order on October 26, 1987 holding that Hank Williams, Jr. was not in fact the only natural child of Williams, Sr. and that Catherine Yvonne Stone was also a natrual [sic] child of Hank Williams, Sr. There is no appeal from the finding that Stone is and was never entitled to inherit from the Williams estate. This appeal is from the grant of summary judgment dismissing the third party complaint. The finding and holding that Stone is not and was never entitled to inherit from the Williams estate is the law of the case and was not appealed by Stone. Consequently, that fact is accepted and it is unnecessary to brief the reasons that she was not ever and is not now entitled to inherit from the Williams estate.

The function of a third party complaint is not to provide a mechanism to file a tort claim against a non-party to the original complaint. However, that is exactly what was done here. The third party complaint, by Stone's own admissions, is a fraud case against the lawfirm seeking damages. The third party complaint alleges fraud on the part of partner, Stewart, now deceased, and conspiracy to commit fraud between Smith, American States and Stewart plus an allegation of confidential special or fiduciary relationship on the part of Smith, Stewart and American States. The so called third party complaint is merely a three count complaint, not based on an indemnity theory but based on fraud. Rule 14, ARCP permits an action to bring in a party who is or may be liable

to defendant for all or part of plaintiff's claim. The complaint as amended never sought money damages. The third party complaint does seek money. It does not seek indemnity as third party practice is designed but is merely a tort count for fraud.

This Court has specifically ruled on the function of third party practice. In the case of *Quality Homes Company v. Sears, Roebuck and Company*, 496 So.2d 1 (Ala. 1986), this Court holds that the third party practice is used only in the event that the third party defendant is or may be liable for all or part of the plaintiff's claim against defendant. The third party practice is not a vehicle for contributions among joint tort-feasors nor as a vehicle for tendering of a defendant which plaintiff has elected not to sue.

The case in chief here does not seek damages. The so called third party action seeks damages for fraud. The proper method to attack this misuse is by motion to dismiss. See *Quality Homes Company v. Sears, Roebuck and Company*, *supra*.

An analysis of the third party complaint reveals that it is an attempt to sue the third party defendants on a tort theory, not based on indemnity if Defendant Stone were liable to Plaintiff but on a different cause of action - the tort of fraud. The so called third party action is a claim for damages in the amount of \$10,000,000.00 for fraud - separate and apart from any relief sought in the original or amended complaints. The third party complaint was properly dismissed by Judge Kennedy.

Appellants' argument makes the bold and untrue statement that third party defendants intentionally and

willfully concealed from the Montgomery County Courts a child who was known to be the natural daughter of Williams, Sr. That statement overlooks the fact that Mr. Stewart told the guardian ad litem, Mr. Hamilton, about Stone and the agreement between Williams, Sr. and Ms. Jett as far back as 1967 so that the issue could be fully litigated. He could not have been more open. Appellants overlook that Mr. Stewart knew nothing about the whereabouts of Stone during the period of time that he is supposed to conceal facts from her.

In dismissing the Stone claim against the third party defendant Jones, Murray and Stewart, Judge Kennedy stated that he deemed it unreasonable to impose upon Stewart the duty to anticipate or foresee what the law should or might become in the future. Judge Kennedy noted that full disclosure to the court or to interested third parties would have been superfluous. Even so, there was full disclosure on Mr. Stewart's part as far back as 1967 when he told Stone's guardian ad litem all he knew about Stone and the agreement between Williams, Sr. and Jett.

Judge Kennedy holds that Stone was not an heir and entitled to inherit. No appeal was taken from that finding. Alabama law is clear that a minor represented by a guardian ad litem is bound by prior judgments in the same manner as any other party. See *Irwin v. Alabama Fuel & Iron Co.*, 215 Ala. 328, 110 So. 566 (1925). An unappealed adverse judgment is *res judicata* even under circumstances where the judgment is wrong or rested on a legal principal subsequently overruled in another case. See *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 69 L.Ed.2d 103, 191, 101 S.Ct. 2424 (1981) and 46 AmJur

2d Judgments, Section 461 and 50 CJS Judgments, Section 699. In this case, it cannot be argued that Mr. Stewart had any control over whether the guardian ad litem appealed or not. He made disclosure as far back as at least 1967 and Stone's rights were fully litigated. It is clear that the 1967 proceedings in the Circuit Court of Montgomery County involved the question of whether Stone was an heir and entitled to share in the Williams estate. Her guardian ad litem raised this claim and prosecuted this argument. The Court held she was not a child within the meaning of the intestacy laws and not entitled to share in the estate. What then was Mr. Stewart to do? He is accused of fraud for not doing what was done by the guardian ad litem after full disclosure from the very target of Stone's claim of fraud - Mr. Stewart. The 1967 proceedings addressed and decided the issue of whether Stone was an heir of the Williams estate. There is undisputed evidence that in January, 1974, Mrs. Deupree told Stone she was the child of Hank Williams and she had some money coming to her from William, Sr.'s mother. She picked up the money. She read a book about the court orders and significant individuals who provided much information about the additional child of Hank Williams. She was an adult at that time. In 1976 she came to Montgomery and discussed this with Nick Braswell, an attorney. In 1979 she went to the Department of Pensions and Security and talked to Mrs. Emogene Austin and advised Mrs. Austin that she was aware that she was the child of Hank Williams but that she did not "want anyone to ever link her with (her) alleged father." Notwithstanding all this knowledge and the fact that she was aware of the facts, she did not attempt to bring Mr. Stewart into

the picture until October, 1986. She ignored her rights and even as late as 1979 stated that she did not wish to pursue the matter. There were numerous opportunities to uncover more facts. All the court records were matters of public record. She had every opportunity to pursue her claim of fraud against Mr. Stewart but chose not to do so until 1986. In fact, she even took the position that she wanted to keep her identity secret. Since 1974 when even Stone acknowledges that she had actual knowledge of her possible claim to the estate, numerous individuals with important input had died including her biological mother, Bobbie W. Jett, Hank Williams, Jr.'s mother, Audrey Mae Williams, Stone's adoptive father, Mr. George Deupree, and most importantly, Bob Stewart, the target of the purported fraud. Mr. Stewart is unable to tell his story as an alleged active participant in this fraud.

Not only have witnesses died, but others have had their memories dimmed by the passage of some 20 to 30 years. Unquestionably more than 30 years has passed since the events of some of these alleged frauds took place.

This case is perfect for the Court to note that there comes a time when antiquated claims will not be considered by the Court. In *Barrett and Tomjack v. Wedgeworth, as Administrator*, 22 ABR 600 (85-795 and 85-796) this Court stated:

"As a matter of public policy, and for the repose of society, it has long been the settled policy of this state, as of others, that antiquated demands will not be considered by the courts, and that, without regard to any statute of limitations, there must be a time beyond which human transactions will not be inquired into. . . . The

consensus of opinion in the present day is that such presumption is conclusive, and the period of 20 years . . . [is] a complete bar; and, as said in an early case, 'the presumption rests not only on the want of diligence in asserting rights, but on the higher ground that it is necessary to suppress frauds, to avoid long dormant claims, which, it has been said, have often more of cruelty than of justice in them, that it conduces to peace of society and the happiness of families, "and relieves the courts from the necessity of adjudicating rights so obscured by the lapse of time and the accidents of life that the attainment of truth and justice is next to impossible." ' " *Harrison v. Heflin*, 54 Ala. 552, 564 (1875).

The purpose of the rule of repose is "to prevent inquiry into claims, such as this, where the evidence is obscured by the passage of time and deaths of necessary witnesses." See *Barrett and Tomjack, supra*.

A review of the development of the law over the years is unnecessary to this appeal because the finding that Stone was not an heir and not entitled to share in the estate of Williams, Sr. is not subject to review, there having been no appeal taken from that holding. Therefore, the illegitimate child, Stone, was not as a matter of law, an heir or potential heir under the law of Alabama in 1953 and 1967. Accordingly, Mr. Stewart had no duty or obligation to acquaint the court with the child's existence nor to provide information regarding the child because the child simply was not, and could not have been, determined to be an heir under the then existing law and facts. To say otherwise would be to require under penalty of fraud, that the attorney for the estate anticipate changes in the law which did not occur until some twenty-five

years later. That is to say, that in order to be free from fraud claims, the attorney would have to predict that some day the Alabama Supreme Court or Legislature would change the law and permit judicial determination of paternity for inheritance purposes and would have had to insist that such a determination be made just in case it ever did become important. To state that such a failure is fraud is going far beyond the duty of good faith as referred to in Judge Kennedy's order. The duty of Mr. Stewart was to act in good faith according to the law of the State of Alabama as it existed at that time, not to anticipate and engage in conjecture on what might become the law in the future. Even if Mr. Stewart had advised the court in 1953 that there may be an illegitimate child, it must be assumed that the court would follow clearly established law that existed at that time. The court would have undoubtedly held that Stone, being illegitimate and not legitimated, was not an heir and could not inherit from the Williams estate. The question of biological parentage was irrelevant because *Moore v. Terry*, 220 Ala. 47, 124 So. 80 (1929) makes it clear that such was irrelevant at that time. Nothing would change. The holding that she was not an heir is not even raised in this appeal and is a final order of the court.

For purposes of analyzing the alleged fraud on the court, the court should look to the law as it existed at the time the alleged disclosure should have been made about what should be disclosed. It would be totally inappropriate to apply any other law and say that Mr. Stewart should have followed laws that did not come into existence for another twenty-five years. Mr. Stewart committed no fraud in 1953 nor thereafter as Judge Kennedy



holds "full disclosure to the court or to interested third parties would have been superfluous".

The Court will note that in this case, going far beyond the duty of good faith, Mr. Stewart did, in 1967, advise Mr. Drayton Hamilton, Stone's attorney, that there was a possibility of Stone having rights under the estate and he, Hamilton, did seek a judicial declaration of paternity. The issue was before the Court. The Court decided the then-existing law in holding she could not inherit. Regardless of her biological parentage, Stone could not inherit. This is clear from Judge Emmet's order. That is the law of the case.

Appellant cites cases in brief where persons who had inheritance rights were prevented from asserting those rights. The unappealed finding and holding of the Circuit Courts of Montgomery County is that Stone had no inheritance rights. The cases cited are not analogous and appropriate in this instance. There is no fraud on the courts jurisdiction nor any suppression of a known heir.

It is clear that Stone has sat on her rights. She is barred from her fraud case by the statute of limitations. Her cause of action arose when she discovered the alleged fraud or upon closer examination would have led to the discovery of the fraud. See *Papastefan v. B & L Construction Co. of Mobile*, 385 So.2d 966 (Ala. 1980). The undisputed testimony discloses that she was told in 1974 that she was Williams, Sr.'s daughter. She did nothing to pursue Mr. Stewart. In 1979 she knew her identity. She discussed this with Mrs. Emogene Austin to verify what she *already knew* and gained assurance that the record of her adoption and alleged parentage was not accessible to

others (Austin Dep. of 11/86 p. 25-34). In 1980 she contacted and was contacted by Mrs. Stapp and Mrs. Pittman who told her that her original given name was Antha Belle and how to obtain her birth certificate which she did obtain on or before March 26, 1981. Again on or before December, 1980, her adoptive father told her the names of individuals who participated in her adoption process and estate and guardianship proceedings. She examined the records sometime after December, 1980. It was not until October 24, 1986 that Stone claimed fraud on Mr. Stewart's part.

In *Parsons Steel, Inc. v. Beasley & Wilson*, released March 4, 1988, this Court held that the party bringing a fraud action has the burden to prove that he comes within the saving clause of the Code of Alabama, 1975, Section 6-2-3. This Court stated:

"Under that section, the claim for fraud is considered as having accrued at the time of 'the discovery by the aggrieved party of the fact constituting the fraud.' Following that discovery, that party has one year [now two years] within which to file his action. This Court has held that fraud is 'discovered' when it ought to or should have been discovered. *Moulder v. Chambers*, 390 So.2d 1044 (Ala. 1980); *Jefferson Co. Truck Growers Ass'n v. Tanner*, 341 So.2d 485 (Ala. 1977). Thus, the time of 'discovery' is the time at which the party actually discovered the fraud, or had facts which, upon closer examination, would have led to the discovery of the fraud. *Papastefan v. B & L Construction Co., Inc. of Mobile*, 385 So.2d 966 (Ala. 1980)."

Stone did nothing to even attempt to involve Mr. Stewart until October 24, 1986 some thirty-two years after

her claim of alleged fraud. She waited until Mr. Stewart was dead and buried until she ever made any hint that he had defrauded her.

### Summary

The order appealed from is correct and is due to be affirmed.

### CONCLUSION

The Trial Court was correct in granting summary judgment against Stone in this third party complaint and should be affirmed.

Respectfully submitted,

/s/ Robert C. Black

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### CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief upon the following counsel of record in this cause by placing same in the United States Mail, postage prepaid, this 27th day of April, 1988:

G-3.24

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APPENDIX G-4

IN THE SUPREME COURT OF ALABAMA

CASE NUMBER 87-269

CATHERINE YVONNE STONE,

Third Party Plaintiff/Appellant,

v.

GULF AMERICAN FIRE & CASUALTY COMPANY;

AMERICAN STATES INSURANCE COMPANY;

JONES, MURRAY & STEWART, P.C.;

and IRENE SMITH,

Third Party Defendants/Appellees.

ON APPEAL FROM THE CIRCUIT  
COURT OF MONTGOMERY COUNTY

CIRCUIT CASE NUMBER: CV 87-1316

BRIEF OF APPELLEE, IRENE SMITH

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### ISSUE PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT PROPERLY GRANTED THE MOTION OF THIRD PARTY DEFENDANT SMITH FOR SUMMARY JUDGMENT IN HER FAVOR WHERE THERE WAS NO EVIDENCE OF FRAUD.

*Wheeler v. First Alabama Bank of Birmingham*  
364 So.2d 1190, 1199  
(Ala. 1978).

*United States v. Olin Corp.*  
606 F.Supp. 1301  
(N.D. Ala. 1985)

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*Birmingham Realty Co. v. General Service*  
497 F.Supp. 1377, 1390  
(N.D. Ala. 1980)

*E.E.O.C. v. Dresser Industries, Inc.*  
688 F.2d 1199, 1203  
(11th Cir. 1982)

*Smith v. Norman*  
495 So.2d 563  
20 ABR 3058, 3060  
(Ala. 1986).

*Allen & Co. v. Occidental Petroleum Corp.*  
382 F.Supp. 1052  
(S.D.N.Y. 1974)

STATEMENT REGARDING ORAL ARGUMENT

Irene Smith, Appellee, sees no need for oral argument on these issues.

STATEMENT OF THE CASE

This matter comes before the Court after an appeal by Catherine Yvonne Stone (hereinafter "Stone") from a decision by the circuit court of Montgomery County, granting summary judgment in favor of certain alleged third party defendants including Irene Smith (hereinafter "Smith").

The action which resulted in this appeal originally started by the filing of a declaratory judgment action by Randall Hank Williams and others now referred to as the "Williams Group". Following that complaint, an answer and counterclaim was filed by the now Appellant, Stone. At or near the time of the filing of this counterclaim by Stone, a third party complaint was initiated against



Smith, Gulf American Fire and Casualty Company (hereinafter "Gulf American"), American States Insurance Company (hereinafter "American States"), Jones, Murray & Stewart, P.C., and the estate of Robert B. Stewart. This third party complaint apparently alleged an intentional and willful concealment by the third party defendants of Stone's identity. It is further alleged that there was a conspiracy on the part of certain third party defendants to defraud the court and Stone as to matters pertaining to Stone's identity and rights.

As indicated above, summary judgment was granted in favor of all third party defendants and the original movants for declaratory judgment (in part). Evidence concerning the question of declaration that Randall Hank Williams was the sole heir of Hiram Hank Williams was heard by the court on August 25, 1987.

This brief is filed on behalf of third party defendant, now Appellee, Smith.

#### STATEMENT OF THE FACTS

The pertinent facts in this case, as decided by the court below, indicate that on October 15, 1952, Hiram Hank Williams and Bobbie W. Jett entered into an agreement pertaining to the custody and support of an unborn child being carried by Jett. That agreement was prepared by Robert B. Stewart, an attorney in Montgomery, Alabama, and was executed by the principals. This agreement provided that Hiram Hank Williams would make certain provisions concerning the care and needs of Ms. Jett and the unborn child.

On January 1, 1953, Hiriam Hank Williams died intestate.

Letters of administration for Williams' estate were filed in probate court of Montgomery County, in January, 1953. On January 6, 1953, Jett gave birth to a child named Antha Bell Jett, and by agreement, said child was left in the care of the mother of Hiriam Hank Williams, known as Lillian Stone. Stone thereafter adopted Antha Bell Jett and the order of adoption granting custody to her was issued on September 21, 1953. Final decree of adoption was issued on December 23, 1954, and such created the parent-child relationship with the child's name being changed to Catherine Yvonne Stone.

After the death of Lillian Williams Stone, the child was placed in several foster home situations which ultimately resulted in her second adoption, this time by George and Mary Deupree of Mobile. The child's name was then changed to Cathy Louise Deupree.

In 1967 and 1968, while the child (Stone) lived in Mobile with her adopted parents, these parents had conversations with Drayton Hamilton, a Montgomery attorney, who had been appointed guardian ad litem in proceedings dealing with the estate of Hiriam Hank Williams. After these conversations and notice of the proceedings, the Deuprees apparently indicated they had no interest in the outcome of these proceedings and apparently indicated their child had no interest.

A trial resulted from these proceedings which resulted in an attack by the guardian ad litem on the constitutionality of existing statutory law concerning legitimation and an argument that Stone was a legitimate

daughter of Hiriam Hank Williams. While apparently not ruling that Stone was a child of Hiriam Hank Williams, the court did rule that the child in question did not have any right of inheritance from the estate of Hiriam Hank Williams and that Randall Williams was the sole heir of that estate.

Similarly, in January of 1968, the circuit court of Montgomery County ruled that Stone (the child born to Bobbie W. Jett) was not an heir of the late Hiriam Hank Williams. Neither the order of December 1, 1967, from the estate proceedings nor the order of January 30, 1968, from the circuit court were appealed.

In January of 1974, Stone reached the age of majority, was attending the University of Alabama, was informed that Hiriam Hank Williams might be her father, and collected certain funds from the estate of Lillian Stone. Through the years from 1974 to 1980, Stone apparently continued to have indication pertaining to the question of her natural father. It was not until July 1, 1985, that any action was filed in the circuit court of Montgomery County, Alabama, by Stone. This action was not instigated by Stone but rather by the plaintiffs in order to obtain declaratory judgment relief.

#### ARGUMENT

THE TRIAL COURT PROPERLY GRANTED THE MOTION OF THIRD PARTY DEFENDANT SMITH FOR SUMMARY JUDGMENT IN HER FAVOR WHERE THERE WAS NO EVIDENCE OF FRAUD.

Appellee Smith contends that there are numerous reasons why the decision by the circuit court below in

granting the motion for summary judgment should be upheld. This decision by the court was correct and proper for many reasons not the least of which were the ones stated by the court in its decision of July 14, 1987. Smith will address these contentions in the brief that follows and will also address those two allegations of the Appellant found in her brief.

A. STONE WAS NOT A LAWFUL HEIR OF HIRIAM HANK WILLIAMS AND DID NOT STAND AS A BENEFICIARY TO THAT ESTATE.

If there is one point of law that is absolutely clear in this cause, it is that Stone was not an heir to the estate of her alleged biological father, Hiriam Hank Williams (hereinafter "Williams, Sr."). This determination was made after a full hearing on the matter, wherein Stone was represented by counsel Drayton Hamilton, in an order first issued on December 1, 1967. A similar determination was made by the circuit court of Montgomery, Alabama, in a separate proceeding concerning guardianship of the estate in an order dated January 30, 1968. It is clear that when this issue is judged under the law applicable at the time of Stone's birth or the law at present, the result is the same. Stone was not and is not a lawful heir to Williams, Sr.'s estate.

It is clear that if Stone is the natural child of Williams, Sr., she was born illegitimate, and thereafter, was twice adopted by separate parents. As is clear by this record, the determination of the court in this case and previous cases, and the briefs presented, there are presently four ways to legitimate a child so that it can inherit from its natural father who dies intestate. Because two of

those methods require either the marriage of the mother and father and formal written declaration by the father acknowledging his child, they are not discussed herein (there is no evidence that Williams, Sr., and Ms. Jett were ever married and this fact is not in dispute). The remaining two alternatives which were considered by the court below also defeat any claim of inheritance by Stone. One of these alternatives relates to the Alabama Uniform Parentage Act of *Code of Alabama*, 1975, Section 26-12-1 et seq. That statute clearly indicates that a subsequently adopted child may not bring an action to establish paternity under this act. The remaining alternative is also foreclosed by the fact that the Alabama Probate Code (See Section 43-8-48, *supra*.) provides that the subsequent adoption of a child makes that child that of the adopting parents and not of the natural parents.

Similarly, the circumstances of the death of Williams, Sr., and the subsequent birth of Stone indicate that Alabama law in 1952 would be of no benefit to Stone in any attempt to establish herself as a lawful heir.

These matters were correctly decided by the court in late 1967 and early 1968. The court at that time correctly decided those issues and the court below correctly found that those issues should not be relitigated. Any decision to the contrary would have been inconsistent with Alabama law concerning *res judicata*. Where there has been a previous judgment by a competent court of jurisdiction and a decision rendered on the merits involving the same parties, *res judicata* is an appropriate defense. *Wheeler v. First Alabama Bank of Birmingham*, 364 So.2d 1190, 1199 (Ala. 1978). There can be little doubt that the circumstances of this case clearly give rise to a finding that the

defense of res judicata is appropriate. Similarly, Stone is collaterally estopped from submitting these same issues for redetermination. *Wheeler*, supra. The trial court correctly applied these principles in barring Stone's claim made chiefly against the original plaintiffs.

It should also be remembered that the determination by the court below that Stone was not a lawful heir was not appealed and thus has "again" become final.

B. THE ADMINISTRATORS OF THE ESTATE OF WILLIAMS, SR., ARE NOT UNDER A DUTY TO DISCLOSE FACTS WHICH ARE OF NO RELEVANCE. SMITH WAS NOT SHOWN TO HAVE FAILED TO HAVE DISCLOSED ANY MATERIAL FACT RELATED TO STONE.

This matter is one presented by Stone in brief and is placed in this position herein because of its relationship to the argument expressed above. It is the position of Smith that she can be under no duty as an administrator or otherwise to disclose a fact that is of no materiality. The clear, undisputed fact that Stone cannot and could not inherit from the Williams estate either now, in 1953, or in 1967, seems to have alleviated any burden upon Smith to disclose the existence of Stone. To argue that Smith should have made such a disclosure of an immaterial irrelevant fact is to ignore the very definition of fraud. Throughout the first argument of Stone in brief, numerous allegations are made concerning the duties of administrators to the estate. Many, if not all, of those contentions and case citations deal with the duty of one to disclose the existence of known or potential heirs or claimants to an estate. While this argument is made over

and over by Stone in brief, it ignores the above indicated fact that Stone was not an heir nor a potential claimant. What Stone now asks of this Court would have required Smith and others to disclose facts (the existence of Stone) which were of no consequence. This is not a matter of individuals ("in many cases a non-lawyer") making a judicial determination as Stone suggests. To have required Smith to make this disclosure (and conclude that the failure of such constitutes fraud), would have similarly required Smith to disclose the existence of every individual regardless of their relationship to Williams, Sr., or the estate. Smith was not required to tell the court about the existence of Stone any more than she would have been required to have reported the existence of some unrelated neighbor, friend, etc., of Williams, Sr. These fictional [sic] people (of this example) would stand in the same position as Smith as they were by law neither heirs nor claimants to the estate.

None of the arguments expressed by Stone in brief are of any significance given the adverse adjudication to her. An administrator or any fiduciary would not appear to be required to disclose irrelevant and immaterial facts. As much as Stone would argue to the contrary, it appears that since she had no claim to the estate, as a matter of law, her existence was of no significance. If there had been anything that Stone could have done to change the circumstances either in 1953, 1967, or presently, perhaps this argument would be different. Ms. Stone could not change the circumstances of her birth, Williams' death, nor her two subsequent adoptions. Because of these circumstances, Smith should not be held to a duty to disclose the existence of Stone. There is no showing that



Smith failed to act in good faith and there is no showing that "full disclosure" as argued by Stone would have made any difference. There exists no cause of action against Smith on this basis.

Smith would also point out that by making this argument, she does not admit to any failure of disclosure concerning the existence of Stone. Stone's brief before this Court, in places, submits that Smith knew of Stone's existence because of certain letters she had written. In other places, it is submitted by Stone that Smith failed to make such a disclosure. This portion of Stone's argument is at best inconsistent.

C. STONE PRESENTED NO EVIDENCE THAT SMITH COMMITTED ANY FRAUD ON THE COURT.

Although this issue is phrased by Stone in her brief under a separate heading, it does not appear to be any different in substance from her initial issue. The same argument made in response to her first issue (See Section "B" above) is applicable. Whether this Court uses the definition of extrinsic fraud or intrinsic fraud appears to make no difference in this case. There simply can be no fraud in failing to disclose a matter which is insignificant in the proceedings.

Although not referenced in "B" above, it should be noted that the argument of Stone in brief is entirely inconsistent with the findings of the Montgomery Circuit Court in 1967 and 1968 and with the unappealed decision of Judge Kennedy below. Those decisions clearly indicate that a new determination of Stone's status as an heir is barred by the doctrine of res judicata. By definition (and

by the facts of the 1967-68 decisions), the parties to the present action must have been parties to prior actions. Stone was represented at the time of the 1967-68 proceedings by Drayton Hamilton and it is totally inconsistent to claim that her existence was not disclosed to the court. Again, had there been any basis for relief as claimed by Stone, her interests would have been protected by counsel at that time. A guardian ad litem was appointed apparently each and every year to represent interests of unknown potential heirs. Had Stone been such an heir, it is clear that her interests would have been protected.

D. OTHER REASONS WHY SUMMARY JUDGMENT IN SMITH'S FAVOR WAS APPROPRIATE.

Although the court below did not necessarily rely upon other grounds for support of its July 14, 1987, ruling, it appears clear that other grounds exist. These were asserted below and will continue to be asserted before this Court.

Stone's claims are barred by the equitable doctrine of laches. Stone is seeking equitable relief and, therefore, her complaint is subject to the defense of laches. Laches is a purely equitable doctrine by which such relief may be denied to one who has been guilty of unconscionable delay in seeking the relief. *United States v. Olin Corp.*, 606 F.Supp. 1301 (N.D. Ala. 1985); *Multer v. Multer*, 195 So.2d 105, 108 (Ala. 1966). Smith submits that such precluded Stone from bringing all of these claims.

There can be little doubt that there was a significant delay in bringing this action by Stone. It is equally clear

that this delay was not excusable and that undue prejudice resulted to Smith because of this delay. These facts were sufficient by themselves to warrant the dismissal of the action because of the doctrine of laches. *Birmingham Realty Co. v. General Service*, 497 F.Supp. 1377, 1390 (N.D. Ala. 1980).

All of the evidence indicates that Stone knew of her possible rights at least as early as 1974. (There is clear evidence that she may well have known prior to then and it is undisputed that her adoptive parents and previous legal guardians knew of this possibility as early as 1967). Even with this information, Stone failed to take any action until 1986. To this date, Stone has provided no explanation for this delay. It is submitted that no explanation can be given by Stone as there is no reasonable excuse for such a delay. Thus, laches is an appropriate defense.

It should also be noted that Smith would suffer from this deliberate delay of Stone in bringing this suit. Obviously, there are numerous witnesses who would have been available previously who are not now living. These include relatives, other administrators of the estate, foster parents and other legal guardians, all of whom are now deceased and all of whom could have provided significant testimony concerning the issues raised. It is entirely possible that Smith now might not be able to prove all of her available defenses to this action because of the unavailability of these witnesses. This is a significant factor in determining the prejudice element of the laches defense. *E.E.O.C. v. Dresser Industries, Inc.*, 688 F.2d 1199, 1203 (11th Cir. 1982).

All of these factors and the cases cited above indicate that Smith was entitled to judgment in her favor because of the doctrine of laches.

Equally available to Smith to support her position that the judgment below is proper is the doctrine of equitable estoppel and waiver. Because the record indicates that the adoptive parents of Stone had knowledge of her potential rights, she should now be estopped from asserting her claim. It should be noted that this knowledge can be imputed to those adoptive parents as early as 1968. Those parents deliberately bypassed the opportunity to appeal the decision of the Montgomery County Court and apparently did so because they thought such to be in the best interest of Stone. These parents felt that the added burden of public knowledge that Stone was (or might be) the bastard child of Hiram "Hank" Williams outweighed any benefit that might have resulted from further legal pursuit of the matter. They allowed Stone the benefit of protection from this public scrutiny and did so knowing of the obvious consequences. Having received that benefit, Stone should not now complain. Regardless of the motives of the adoptive parents, it remains true that Stone, herself, apparently chose the same benefit since she delayed any action herself for almost ten years after learning of the possible claim.

In addition, it is clear that Smith has in effect relied upon the long established silence on the part of Stone and her adoptive parents. A great deal of time has passed since the adoptive parents first learned of this information, and Stone has also had this knowledge for at least ten years. Smith, during that time, has moved from the State of Alabama, has pursued other business ventures,

and has left behind this portion of her life. She had a right to assume that this matter was closed and had no reason to stay actively involved with the estate. She relied on Stone's failure to assert these claims in a timely manner. Smith should not now be called upon to defend this action given this unreasonable delay. To have required her to defend this action now would result in material prejudice to her.

The above provides strong support for Smith's claim that the doctrine of estoppel is also a ground supporting the judgment below. All three elements of that doctrine are present here. *Smith v. Norman*, 495 So.2d 563, 20 ABR 3058, 3060 (Ala. 1986).

Similarly, these same facts support Smith's claim on the defense of waiver. Stone was aware of these possible claims, knew of the previous judicial determination and even stated publicly that she might have such a claim. However, she still chose to sit silent and take no action to enforce or assert these possible claims. This evidences an intentional waiver because of her chosen course of conduct and this Court can presume assent to the adverse right and waiver of the right now sought to be enforced. *Allen & Co. v. Occidental Petroleum Corp.*, 382 F.Supp. 1052 (S.D.N.Y. 1974). Judge Kennedy's ruling below is supported also by these separate doctrines of waiver and equitable estoppel.

In addition to the above, Smith would also assert that the complaint against her was due to be dismissed because it was not a proper third party complaint under Rule 14 of the Alabama Rules of Civil Procedure. The allegations of fraud against Smith by Stone are not such

that they can be made to fit within Rule 14. Smith is not a person who may be liable to Stone for all or part of the original plaintiffs, (the Williams' group and their complaint for declaratory judgment) claim against Stone. This complaint is an improper use of third party practice under Rule 14 of the Alabama Rules of Civil Procedure.

### CONCLUSION

It is clear that based on the foregoing brief and argument that Stone cannot show that the trial court improperly exercised its summary disposition powers. Stone cannot prevail on her arguments concerning failure to disclose facts which are not relevant nor can she prevail on a claim of fraud on the court. All of these issues are disposed of by the previous determination of the circuit court. Additionally, there are numerous other grounds which would have supported the decision below.

The decision is due to be affirmed.

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### CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing upon all counsel of record by placing same in the U. S. Mail, postage prepaid and addressed correctly on this 27th day of April, 1988.

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APPENDIX G-5  
IN THE SUPREME COURT  
OF ALABAMA

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CATHERINE YVONNE STONE, \*

Appellant \*

vs. \*

GULF AMERICAN FIRE & \*  
CASUALTY COMPANY; \*  
AMERICAN STATES \*  
INSURANCE COMPANY; \*  
JONES, MURRAY & STEWART, \*  
P. C.; IRENE SMITH, \*

Appellees \*

CASE NO. 87-269

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BRIEF OF APPELLEES, GULF AMERICAN FIRE &  
CASUALTY COMPANY AND AMERICAN STATES  
INSURANCE COMPANY

---

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### STATEMENT OF THE CASE

On September 10, 1985, Randall Hank Williams (hereinafter "Williams, Jr.") (CR 1-12), Wesley H. Rose, and

Roy Acuff, as trustees of liquidation for stockholders of Fred Rose Music, Inc. and Milene Music, Inc., (hereinafter "Williams Group") filed a declaratory judgment action against Catherine Yvonne Stone (hereinafter "Stone") (CR 1-12). The Complaint was amended on September 11, 1985 (CR 13-18), and on November 14, 1985 (CR 135-154), and as stated by the trial Judge in his Final Order On Motions For Summary Judgment issued on July 14, 1987, essentially requests that the Court make the following determinations:

1. Stone has no entitlement to any proceeds or royalties from the estate of Hiram "Hank" Williams (hereinafter "Williams, Sr.").

2. As an adopted child, Stone is barred from attempting to establish that she is a child of Williams, Sr. and that Williams, Jr. is the sole child of Williams, Sr.

3. Stone has never been adjudicated, under the laws of the State of Alabama, to be the child of Williams, Sr.

4. Stone is barred from now attempting to establish that she a child of Williams, Sr. by the applicable statute of limitations, the doctrine of laches, waiver and estoppel, and, because of this Court's previous judgments and orders.

5. Hank Williams, Jr. is the sole child and sole heir of Williams, Sr., and thus is the sole person with rights in and to the Estate of Williams, Sr. (CR 1108)

Stone filed a counterclaim against Williams, Jr. on October 14, 1986, and alleged that she is the natural daughter of Williams, Sr. (CR 314) Williams, Jr. filed an Answer to the counterclaim of Stone on November 19, 1986. (CR 470-473)

Stone filed a Third Party Complaint against Gulf American Fire and Casualty Company (hereinafter "Gulf American") and American States Insurance Company (hereinafter "American States"), Jones, Murray & Stewart, P.C., Irene Smith, and the Estate of Robert B. Stewart on October 24, 1986. (CR 361-409) The trial Judge in his Final Order On Motions for Summary Judgment summarized the allegations of the Third Party Complaint as follows:

"The third party complaint alleges that there was an intentional, willful and fraudulent concealment from the Court from 1953 through 1967 of Stone's identity and claim as a natural child of Williams, Sr. It further states that there was a conspiracy to defraud the Court and Stone by purposefully concealing pertinent information and theories that would presumably have entitled Stone to a share in the proceeds of the Williams, Sr. estate. Stone files a claim for relief against the sureties for payment on the surety bond issued by Gulf American and its successor American States on the administrator's bond issued in connection with the estate of Williams, Sr." (CR 1108-1109)

On November 24, 1986, Gulf American and American States filed a Motion to Dismiss the Complaint on the grounds that the Complaint failed to state a cause of action and that the allegations of the Third Party Complaint were barred by the statute of limitations. (CR 499-500) Jones, Murray & Stewart and Irene Smith filed Answers to the Complaint and raised a number affirmative defenses. (CR 494-498; 626-629) Pursuant to agreement of the parties, the Estate of Robert B. Stewart was dismissed as a Third-Party Defendant. (CR 1096-1097)

The Williams Group, Irene Smith, Jones, Murray & Stewart, P.C., Gulf American and American States filed Motions for Summary Judgment as to all claims made by Stone. (CR 467-469; 897-898; 899-902; 903-905)

The trial court entered its Final Order on Motions for Summary Judgment on July 14, 1987, and granted the Motions for Summary Judgment of all Third Party Defendants, including Gulf American and American States. (CR 1107-1119) The only issue not disposed of by the trial court was whether Randall Hank Williams was the sole child of Williams, Sr. (CR 1119) On September 2, 1987, this remaining issue proceeded to trial and on October 26, 1987, the trial court entered its Final Order determining that Randall Hank Williams was not in fact the only natural child of Williams, Sr. and that Stone is also the natural child of Williams, Sr. (CR 1165)

Stone filed Notice of Appeal to this Court on December 2, 1987, from the order of the trial court granting summary judgment to the Third Party Defendants. (CR 1166-1170)

The Circuit Clerk has consecutively numbered all pages in the Clerk's Record, and the Reporter has consecutively numbered the pages in the Reporter's Transcript. In view of such page numbering by the Clerk and the Court Reporter and in accordance with Rule 10(b) ARAP, Gulf American and American States will herein refer to the Clerk's Record page numbers as "CR" and the Reporter's Transcript page number as "RT".

ISSUES PRESENTED FOR REVIEW

- I. WHETHER OR NOT STONE'S FRAUD CLAIM IS BARRED BY THE ALABAMA STATUTE OF LIMITATIONS IN THAT SHE FAILED TO ASSERT HER CLAIM UNTIL OVER SEVEN YEARS AFTER SHE HAD KNOWLEDGE OF THE ALLEGED FRAUDULENT CONCEALMENT?

*Miller v. SCI Systems, Inc.*, 479 So. 2d 718 (1985)

*Bank of Red Bay v. King*, 482 So. 2d 274 (Ala. 1985)

*Harrell v. Reynolds Metal Company*, 495 So. 2d 1381 (1986)

- II. WHETHER THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT FOR GULF AMERICAN AND AMERICAN STATES ON THE FRAUD CLAIM ASSERTED BY STONE?

*Hutchins v. State Farm Mutual Automobile Insurance Company*, 436 So. 2d 819 (Ala. 1983)

*Collier v. Brown*, 285 Ala. 40, 228 So. 2d 800, 802 (1969)

*Hall Motor Company v. Furman*, 285 Ala. 499, 234 So. 2d 37 (1970)

- III. WHETHER THE TRIAL COURT PROPERLY DETERMINED THAT STONE FAILED TO STATE A CAUSE OF ACTION AGAINST GULF AMERICAN AND AMERICAN STATES?

*Silk v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 437 So. 2d 112 (Ala. 1983)

*Donald v. City National Bank of Dothan*, 295 Ala. 320, 329 So. 2d 92 (1976)

*McLaughlin v. McLaughlin*, 53 Ala.Civ.App. 545, 302 So. 2d 233 (1974)

*Campbell v. Alabama Powr [sic] Co.*, 378 So. 2d 718 (Ala. 1979)



## STATEMENT OF THE FACTS

The trial Court made the following finding of facts in its Final Order On Motions for Summary Judgment of July 14, 1987 (CR 1107):

"On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

"The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

"Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

'After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and

other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting its mother.

In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.'

"Williams, Sr. dies intestate on January 1, 1953.

"Lillian Williams Stone filed for letters of administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

Billie Jean Jones, 'who states she is the widow',  
 Randall Hank Williams, Jr.,  
 Mrs. Irene Williams Smith, a sister  
 Elonzo H. Williams, father and  
 Lillian S. Stone, mother

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams Sr./Jett agreement several months earlier.

"Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

"On or about January 28, 1953, Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father.

"The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

"In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. At that time an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell Jett (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

"Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made

a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

"In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959 Stone was again adopted. Thus, a second adoptive/parent child relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

"The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads:

'D. CATHERINE YVONNE STONE - From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the death of Lillian Stone, and then re-adpoted [sic] by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or

may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict [sic] their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.'

In response, Stewart wrote in pertinent part:

'None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

- a. Consider that by the adoption all rights under the renewal statute have been lost.
- b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.
- c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment

which would bar a later claim would have to be made with the understanding of the facts by the court.'

"It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

"In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr. then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. It was in those answers that the question of existence of and legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

"The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been

fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

"In 1967 and 1968 Stone lived in Mobile with her adoptive parents Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

"A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued:

'We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama Law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from Hank Williams compositions. . . .'



"The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. In the Order the court found as follows:

'The principal issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination* (emphasis added).

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .

IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:

. . . .2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.'

"The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. In that order,

the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

'Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiram (Hank) Williams.

The Court is impressed with the argument [sic] of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimate off-spring should be afforded adequate property rights. The common law is severe in calling such off-spring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been . . . adopted. . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

. . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

. . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiram (Hank) Williams within the meaning of the Copyright Law.'

"Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama law.

"Following the death of Williams, Sr., Fred Rose Music, Inc. and Milen Music, Inc., and their predecessors in interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams, Sr.

"It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that 'the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child.' In April of 1974, Stewart advised counsel for Williams, Jr. that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's 'ancestry may well be reasonably obvious to her, and further trouble may ensue.'

"The Estate of Williams, Sr. would be closed in August of 1975 without further incident to the issue of Stone's rights, if any, to a share in said estate.

"In January of 1974, Cathy Stone reached the age of majority. While attending the University of Alabama, she was informed by her adoptive mother that Williams, Sr. might be her father. Stone was also advised that the Circuit Court of Montgomery County was holding certain funds for her from the estate of Lillian Stone. Stone traveled to Montgomery and received the proceeds from the estate of her former adoptive mother. It appears from the record that it was at about this time that Stone began to seriously seek information concerning her parentage.

"From 1976 to 1979 Stone had several encounters with individuals that had knowledge surrounding her earlier years. It appears from the record that Stone had formed an opinion as to her parentage as early as the Fall of 1979. Stone continued to retrieve documents that bore on the issue throughout the period of 1979 through 1980.

Additional significant undisputed facts relating to Gulf American and American States show:

1. Gulf American issued a bond on behalf of Irene W. Smith, as the administratrix of the estate of Hank Williams, Sr. on March 18, 1958, which continued in effect until October 3, 1969, when Robert B. Stewart became the administrator of the estate of Hank Williams and another bond was issued on his behalf by Gulf American. (CR 906-907)
2. On April 27, 1970, the Final Decree on Partial and Final Settlement was entered in the Circuit Court of Montgomery County, Alabama, *In the Matter of the Estate of Hiram "Hank" Williams, deceased*, Civil Action No. 25056 which discharged Irene W. Smith, as the administratrix of the Estate of Hank Williams from any further liability in connection with or arising out of the administration of the

estate and also discharged Gulf American of all liability as surety on the bond of Irene W. Smith. (CR 1082-1085)

3. On July 14, 1975, the Court entered a Decree Approving Final Settlement which discharged Robert B. Stewart as administrator of the Estate of Hank Williams and Gulf American, as surety on the bond of Robert B. Stewart. (CR 915)
4. Gulf American Fire & Casualty Company was merged with American States Insurance Company on or about March 31, 1979. (CR 906)
5. Gulf American and American States Insurance Company had no involvement in the Estate of Hank Williams other than the issuance of the administrator's bond on behalf of Irene W. Smith and later, Robert B. Stewart. (CR 906-908)

#### ARGUMENT

##### I. STONE'S FRAUD CLAIM IS BARRED BY THE ALABAMA STATUTE OF LIMITATIONS

The undisputed facts in this case clearly establish that the fraud claim of Stone is barred by the Alabama Statute of Limitations. In January of 1974, Stone reached the age of majority and was informed by her adoptive mother that Williams, Sr. might be her father. Stone had apparently determined that Williams, Sr. was her father as early as the fall of 1979 and continued to obtain documents relative to this issue from 1979 until 1980.

Prior to January 9, 1985, the statute of limitations in fraud cases expired one year after the fraud was actually discovered or should have been discovered (Ala. Code Section 6-2-3). Effective January 9, 1985, Section 6-2-3 was

amended and Section 6-2-39 was repealed to substitute "two years" for "one year" in such statute of limitations.

Since the fraud claim in this case was not filed until October 14, 1986, it was already barred under the old "one year" statute of frauds when the new "two year" statute became effective on January 9, 1985. However, even if the new "two year" statute was applicable, the fraud claim here is still barred by the new statute.

The law on the application of the statute of limitations in fraud cases was well stated by this Honorable Court in *Miller v. SCI Systems, Inc.*, 479 So. 2d 718 (1985), as follows:

"The statute of limitations in fraud cases expires one year after the fraud is actually discovered or should have been discovered. (Ala. Code Section 6-2-3 (1975).) The statute begins to run when the plaintiff learns facts which would provoke inquiry by a person of ordinary prudence and, by simple investigation of the facts, the fraud would have been discovered. See, e.g., *Sexton v. Liberty National Ins. Co.*, 405 So. 2d 18 (Ala. 1981); *Gonzales v. U-J Chevrolet Company, Inc.*, [451 So. 2d 244 (Ala. 1984)]."

The rule was also stated in *Bank of Red Bay v. King*, 482 So. 2d 274 (Ala. 1985), as follows:

"The statute of limitations applicable to actions for fraud is found at Code of 1975, Section 6-2-39. Under this section, the applicable period is one year, subject to the exception found in Section 6-2-3, which provides:

'In actions seeking relief on the ground of fraud where the statute has created a bar, the claim must not be considered as having

accrued until the discovery by the aggrieved party of the fact constituting the fraud, after which he must have one year within which to prosecute his action.'

Thus, the statute does not begin to run until the fraud is discovered.

"The 'fact constituting the fraud' is deemed to have been discovered when it ought to have been discovered; that is, at the time of the discovery of facts which would provoke inquiry by a person of ordinary prudence and which, if followed up, would have led to the discovery of the fraud.'

*Papastefan v. B & L Construction Co.*, 385 So. 2d 966 (Ala. 1980)."

Again, this Court recently reiterated the rule in *Harrell v. Reynolds Metal Company*, 495 So. 2d 1381 (1986), as follows:

"Facts constituting fraud are deemed discovered 'when the person either actually discovered, or when the person ought to or should have discovered, facts which would provoke inquiry by a person of ordinary prudence, and, by simple investigation of the facts, the fraud would have been discovered.' *Gonzales v. U-I Chevrolet Co.*, 451 So. 2d 244, 247 (Ala. 1984); *Cooper Chevrolet, Inc. v. Parker*, [Ms. 84-362, December 6, 1985] \_\_\_ So. 2d \_\_\_ (Ala. 1985). If the facts regarding the discovery of the fraud are uncontroverted and they demonstrate that the discovery was more than one year prior to the commencement of the lawsuit, summary judgment is appropriate. *Gonzales, supra*, at 247; *Moulder v. Chambers*, 390 So. 2d 1044, 1046 (Ala. 1980)."



Stone had personal knowledge, or in the exercise of reasonable diligence should have known, the existence of the alleged fraudulent concealment by the Third Party Defendants in 1974. In 1979, Stone believed that she was the daughter of Williams, Sr., but did not seek to enforce her alleged rights and claims until 1986.

The statute of limitations is tolled and the time period for bringing an action extended when there has been a fraudulent concealment by the party guilty of the fraud. *Ryan v. Townsend Ford, Inc.*, 409 So. 2d 784 (Ala. 1981). However, the burden is on the party bringing an action for fraud to show that he comes with the purview of this provision if it otherwise appears that the statutory period has expired. *Lamplighter Dinner Theatre, Inc. v. Liberty Mut. Ins. Co.*, 792 F.2d 1036 (11th Cr. 1986).

The trial court found that the undisputed facts show that in January 1974, Stone was informed by her adoptive mother that Williams, Sr. might be her father and that Stone had arrived at the opinion that Williams, Sr. was indeed her father in the fall of 1979. The fraud action in this case was not filed until October 14, 1986. A period of approximately seven years elapsed from the time Stone first arrived at an opinion that Williams, Sr. was her father until she asserted her alleged fraud claim. Stone has not met her burden of showing a fraudulent concealment so as to toll the statute of limitations and thereby extend the time to bring her action. Accordingly, any claim for alleged fraudulent concealment by the Third Party Defendants is barred by the statute of limitations.

## II. GULF AMERICAN AND AMERICAN STATES WERE ENTITLED TO SUMMARY JUDGMENT ON THE FRAUD CLAIM ASSERTED BY STONE

The essential elements of actionable fraud in Alabama were clearly stated in *Hutchins v. State Farm Mutual Automobile Insurance Company*, 436 So.2d 819 (Ala. 1983), as follows:

"Actionable fraud in Alabama consists of (1) a false representation, (2) concerning a material fact; (3) the plaintiff must rely upon that false representation; and (4) plaintiff must be damaged as a proximate result. *International Resorts, Inc. v. Lambert*, 350 So. 2d 391 (Ala. 1977). Under these elements it is fundamental that the representee who has relied on the defendant's alleged misstatements and the plaintiff who was injured must be one and the same. *Ray v. Montgomery*, 399 So. 2d 230 (Ala. 1980); *Jordan & Sons v. Pickett*, 78 Ala. 331 (1884)."

Therefore, to overcome the summary judgment motion of Gulf American and American States in this action for fraud, the Plaintiff had to produce some admissible evidence of the following essential elements:

1. A false representation;
2. The false representation must concern a material existing fact;
3. The Plaintiff must rely on that false representation;
4. Plaintiff must be damaged as a proximate result.

*Earnest v. Pritchett-Moore, Inc.*, 401 So. 2d 752, 754 (Ala. 1981); *Pugh v. Kaiser Aluminum & Chemical Sales, Inc.*, 369 So. 2d 796, 797 (Ala. 1979); *International Resorts, Inc. v. Lambert*, 350 So. 2d 391, 394 (Ala. 1977).

Under these requirements, it is readily apparent that there was no evidence before the trial judge of a false representation by Gulf American and American States to the Stone. Stone had no contact whatsoever with Gulf American and American States. Therefore, it is obvious that the Stone did not have a cause of action against Gulf American and American States for direct fraud.

In an action for fraud based on the suppression of material facts, there must be an obligation on the Defendant to communicate such material facts to the Plaintiff. Unless confidential relations or special circumstances exist, mere silence is not a fraud; there must be active concealment or misrepresentation. *Collier v. Brown*, 285 Ala. 40, 228 So. 2d 800, 802 (1969).

One of the essential elements of a legally viable claim for fraud based on suppression of a material fact is that there must be a duty to disclose in the first instance. *Hall Motor Company v. Furman*, 285 Ala. 499, 234 So. 2d 37 (1970). Here, there was no such duty on Gulf American and American States. Stone's claims against Gulf American and American States were simply legally insufficient to state a claim upon which any relief could be granted against Gulf American and American States.

The only involvement of Gulf American or American States in this matter was the issuance of a surety bond for the administratrix of the estate, Irene W. Smith, and later the administrator of the estate, Robert B. Stewart. Apparently, Stone contends that Gulf American and American States had a duty to disclose to the Court in 1953 that she was the alleged daughter of Williams, Sr.

The law in Alabama is crystal clear that the absence of a confidential relationship which imposes an obligation to speak, mere silence can not constitute a fraud. *Harrell v. Dodson*, 398 So. 2d 272 (Ala. 1981). In this case, the pleadings and the evidence show without dispute that there was no fiduciary duty owed by Gulf American and American States to Stone. There was no confidential relationship between Gulf American and Stone at any time.

The record is silent as to any evidence of any kind against Gulf American and American States. In fact, Stone does not even argue in brief that Gulf American and American States had any duty to her arising out of the administration of the estate of Williams, Sr. Accordingly, Gulf American and American States were entitled to a summary judgment as a matter of law.

III. THE TRIAL COURT PROPERLY DETERMINED THAT THE THIRD PARTY COMPLAINT FAILED TO STATE A CAUSE OF ACTION AGAINST GULF AMERICAN AND AMERICAN STATES

The trial Court in its Order On Motions for Summary Judgment held that the Third Party Complaint failed to state a cause of action and stated as follows:

"As to the third party claim by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. *If the existence of Stone had been made known to the Court by any of the third party*

*defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments purportedly [sic] occurred, full disclosure to the Court or to interested third parties would have been superfluous."* (emphasis added)

There were no undisputed admissible facts presented to the trial Court in this case to support the essential elements of a claim for fraud against Gulf American and American States. Under ARCP 56, summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Silk v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 437 So. 2d 112 (Ala. 1983).

Where it is clear that no genuine material issue of fact exists based on the pleadings, depositions and exhibits, summary judgment is not only appropriate, but also useful in promoting judicial efficiency and avoiding unnecessary [sic] trials. *Donald v. City National Bank of Dothan*, 295 Ala. 320, 329 So. 2d 92 (1976). Under the foregoing principles of law and the provisions of Rule 56, it is clear that the issues involved in this case against Gulf American and American States involved only matters of

law, not fact, and the Circuit Court was correct in disposing of these issues through summary judgment for the Defendants Gulf American and American States.

Where the facts asserted are such that, even if established, there would be no recovery, then the case turns on a question of law properly disposed of on a motion for summary judgment. *McLaughlin v. McLaughlin*, 53 Ala.Civ.App. 545, 302 So. 2d 233 (1974); *Campbell v. Alabama Power Co.*, 378 So. 2d 718 (Ala. 1979).

The undisputed facts clearly demonstrate that even if Stone's identity and claim as a natural child of Williams, Sr. had been made known to the Court at any time, she would not be entitled to any recovery. Therefore, Stone failed to establish a cause of action for fraudulent concealment since full disclosure at any time from 1953 until 1967 would still result in the denial of her claim to the proceeds of the Estate of Williams, Sr. Accordingly, the trial Court correctly held that Gulf American and American States were entitled to summary judgment.

### CONCLUSION

Stone's alleged fraud claim against Gulf American and American States is barred by the statute of limitations since the undisputed facts show that she believed that Williams, Sr. was her father in 1979. The fraud claim was not asserted by Stone until 1986. The statute of limitations for fraud actions bars any claim that Stone might have against Gulf American and American States.

Stone adduced no evidence that Gulf American and American States did anything to deceive her or to induce

her to act to her detriment. There was no evidence that Gulf American and American States made any false representation to Stone or that she relied on anything done by Gulf American and American States. There was no confidential relationship between Stone and Gulf American and American States; therefore, Gulf American and American States had no duty to communicate with Stone concerning any alleged rights that she might have had in the Estate of Williams, Sr.

Finally, the trial Court correctly held that Stone failed to state a cause of action for which recovery can be had. Gulf American and American States took no action which had any adverse effect on any claim by Stone to the Estate of Williams, Sr. If you accept all of Stone's allegations as true, she is still not entitled to any recovery.

In view of the foregoing, Gulf American and American States were entitled to a summary judgment in the trial court, and the order of the trial Judge granting such summary judgment is due to be affirmed by this Honorable Court.

Respectfully submitted,

/s/ James E. Williams  
JAMES E. WILLIAMS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Appellees, Gulf American Fire & Casualty and American States Insurance Company, has been served upon counsel of record, as follows:

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by mailing a copy of same to each in the United States mail, properly addressed, [sic] first-class postage prepaid, on this the 27th day of April, 1988.

/s/ James F. Hampton  
OF COUNSEL

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APPENDIX G-6  
IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE,	)	
Third Party Plaintiff/Appellant	)	
VS.	)	
GULF AMERICAN FIRE &	)	
CASUALTY COMPANY;	)	
AMERICAN STATES	)	S.CT. NO. 87-269
INSURANCE COMPANY;	)	
JONES, MURRAY & STEWART,	)	
P.C.; IRENE SMITH;	)	
Third Party Defendants/	)	
Appellees	)	

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ON APPEAL FROM THE CIRCUIT COURT OF  
MONTGOMERY COUNTY  
CIRCUIT CASE NO. CV 87-1316

---

REPLY BRIEF OF APPELLANT, CATHERINE  
YVONNE STONE

---

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## ISSUES FOR REVIEW

- I. WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE ADMINISTRATORS OF THE WILLIAMS ESTATE BREACHED NO DUTY BY INTENTIONALLY CONCEALING THE EXISTENCE AND IDENTITY OF A KNOWN NATURAL DAUGHTER AND POTENTIAL CLAIMANT OF THE TESTATE?
- II. WHETHER CATHERINE YVONNE STONE PRESENTED EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT?
- III. WHETHER THE THIRD PARTY CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS OR

LACHES? (THIS ISSUE WAS NOT ADDRESSED BY THE TRIAL COURT, BUT IS RAISED BY THE APPELLEES IN THEIR BRIEFS.)

- IV. WAS THE THIRD PARTY COMPLAINT PROPERLY FILED, AND WAS THE OBJECTION PROPERLY MADE TO ANY POSSIBLE DEFECT OF PLEADING? (THIS ISSUE WAS NOT ADDRESSED BY THE TRIAL COURT OR RAISED IN ANY PLEADING OR PROCEEDING IN THE COURT BELOW, BUT IS RAISED BY THE APPELLEE, JONES MURRAY & STEWART, IN ITS BRIEF.)

#### STATEMENT OF THE CASE

Appellant, Catherine Yvonne Stone, adopts and incorporates by reference the Statement of the Case set out in her original brief, and adds the following facts.

Count Four of the Third Party Complaint states a cause of action against Gulf American Fire and Casualty Company and American States Insurance Company, as successor in interest of Gulf American on the bond. Paragraph 36 of the complaint states:

36. In the event Stone recovers a judgment against either Smith, Stewart or Jones Murray & Stewart or real parties in interest, third party defendant Gulf American Fire and Casualty Company and American States Insurance Company, successor in interest, and real parties in interest A, B, F and N, are liable as surety and Stone hereby demands judgment therefor.

Catherine Yvonne Stone makes no other claim of Gulf American and American States.

The defendants failed to raise any objection to the Third Party Complaint by Answer dated November 24, 1986.

## STATEMENT OF THE FACTS

Appellant adopts and reincorporates by reference the Statement of the Facts which is set out in her original brief.

## ARGUMENT

- I. THE ADMINISTRATORS OF THE ESTATE OF WILLIAMS WERE CHARGED WITH A DUTY TO NOT WILLFULLY CONCEAL THE EXISTENCE AND IDENTITY OF A NATURAL CHILD AND POTENTIAL HEIR OF THE DECEASED.

The existence of a natural daughter of Williams Sr. is not a fact of no consequence. The appellees argue in their briefs that there was no duty to disclose the existence of Cathy Stone to the court at any time because she "was not as a matter of law, an heir or potential heir under the law of Alabama in 1953 and 1967." They suggest that imposing the burden upon them is tantamount to requiring them to disclose to the court the existence of unrelated neighbors, friends and fictional people of the deceased, and requiring the lawyers and administrators to foretell the law.

This is not an answer to the arguments presented by Cathy Stone. It is not the responsibility or the right of the administrators and the attorneys for the estate to make a legal determination or judgment that a child of the deceased is not and cannot be an heir of the deceased - that privilege rests solely with the Court. The duty of the administrator is to advise the court of the existence of known children and potential heirs, so that the Court may exercise its jurisdiction and plenary power to make



the determination of heirship. *In Re Bailey's Estate*, 233 N.W. 845 (Wis. 1931); *In Re Flowers*, 493 So.2d 950 (Miss. 1986). If the administrator is permitted to make a clandestine determination of heirship, then what need would there be for the Court?

The appellees make several assumptions in their briefs. It is assumed that the original trial court would not have determined the child to be an heir of the estate. The truth of this assumption is not known, since the original trial court never was presented with the knowledge of the child – instead, the administrator and the attorney made the determination that she was not an heir in 1953. It is further assumed that the child had little or no evidence to prove that she was the child and a legal heir. It is not the privilege of the appellees to make these assumptions – however, it was their duty to tell the court about the child so that evidence, not assumptions, could be put before the court, and the court could make a legal determination instead of a guess or further assumptions.

An administrator is not vested, nor should be vested, with the right to determine heirship *extra judicially and sub rosa*. For instance, consider the situation where a child is not disclosed because the administrator assumes the child is either not of the blood of the deceased, or if so, is illegitimate. The child is thereafter precluded from establishing a blood relationship; written acknowledgment; a marriage and recognition, or a prior successful paternity action. To find no duty on the administrator to disclose known illegitimates is to allow the administrator, in many cases a non-lawyer, to judicially resolve all issues presented by a quagmire of facts and alternative theories of heirship.

The establishment of Stone's heirship right which she was denied in 1953, is of no consequence to the issues before the Court. The issue raised is whether the administrators owed a duty to the biological child and potential claimant to notify the Court of her existence. To find that no duty existed because she probably would have lost her claim is to determine whether a duty exists based upon the potential for damages.

The truth of the matter is that no one will ever know what the outcome of a 1953 claim and possible appeal would have been, for the third party defendants intentionally denied her those rights. If Jones Murray & Stewart is so certain of the ultimate outcome, why did they go to such great lengths to suffocate her rights and existence.

Stone does not ask this Court to impose upon administrators the duty to foretell a change in the law, nor to designate neighbors of the deceased, but rather, merely to recognize that a known biological child, albeit illegitimate, has such a natural, moral and physical relationship to the deceased, as to require her known existence be disclosed to the Court which is administering the affairs of her dead father.

Jones Murray & Stewart claims that Stone waited until Robert Stewart was "dead and buried" before alleging fraud against him. This is factually accurate in that during life Mr. Stewart so carefully protected his dark secret; that he had participated in denying a child her birthright, identity and potential claims to her father's sizeable estate. It is not surprising that, in death, the secret truths of Robert Stewart have now become known to the world. Truth has a way of doing that.

II. CATHERINE YVONNE STONE DID PRESENT EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT.

Appellant adopts and reincorporates by reference her argument on this issue presented in her original brief.

III. THE THIRD PARTY CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS OR LACHES.

Appellees raise the statute of limitations and laches in their briefs. Although these issues were raised in the court below on the motions for summary judgment, they were not addressed by the trial court in its findings of fact or the order.

Appellees contend that Stone's fraud on the court action is barred by the statute of limitations of §6-2-3, Code of Alabama. Fraud on the court is an equitable action. *Hogan v. Scott*, 186 Ala. 310, 313-14, 65 So.2d 209 (1914). If delay is to be raised as a defense to this action, laches, not the statute of limitations is the proper affirmative defense. Delay will bar the cause of action if:

To be affected by laches, the delay must have been with notice of the existence of the right, resulting in disadvantage, harm, or prejudice to another, or have operated to bring about changes in conditions and circumstances so that there can no longer be a safe determination of the controversy. Thus, specific facts which make the delay culpable must appear.

*Touchstone v. Peterson*, 443 So.2d 1219, 1226 (Ala. 1983).

The pivotal question is when did Cathy Stone learn of the scheme to conceal her identity and existence from

the Court? Appellees cite the year 1974. However, in that year, she heard only that she might be the daughter of Williams Sr. She did not receive any evidence of the fraudulent scheme until 1985, during the course of discovery in the action of *Cathy Yvonne Stone v. Hank Williams Jr., et al.*, United States District Court Southern District of New York, Case No. 85 Civ. 7133, an action commenced to recover under the federal copyright act. Jones Murray and Stewart quote from a letter written on August 5, 1985 by Keith Adkinson, Stone's attorney to Williams Jr. and Acuff-Rose/Opryland: "We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father." (page 12 of Jones Murray & Stewart brief) There is no mention of the date of discovery other than that letter. The third party action was filed on October 24, 1986. Accordingly, the only indication in the record is that suit was filed within 16 months of discovery of the scheme to conceal stone.

Delay alone is insufficient to bar a claim for laches. Appellees must show some prejudice by the delay. It is ironic that the very persons who engaged in the scheme of active concealment now claim prejudice because Stone could not discover the very facts which were concealed by them. Appellees should not be permitted to raise the defense of laches when they created the very circumstances which caused the delay. They do not come with "clean hands." Furthermore, what prejudice could be suffered when appellees have known all along that she was the natural daughter, that she was not disclosed to the court and that if she discovered her ancestry, "further

trouble may ensue." (Letter to Robert Stewart from Richard Frank Jr. dated April 15, 1974.)

Under the doctrine of laches, appellees can complain about neither the period of delay or prejudice. At the least, there is a question of fact about the date of discovery of the fraudulent scheme. The date she learned who her natural father was is not the issue in this case.

In the alternative, if this Court determines that the legal statute of limitations does apply, then Cathy Stone is still within the 2 year limitation period, measuring from the date of discovery in 1985. The "new" statute of limitations for fraud became effective on January 9, 1985. Even assuming that she actually discovered the fraudulent scheme sometime in 1984, the amended §6-2-3 would apply. *Bajalia v. Jim Magill Chevrolet, Inc.*, 497 So.2d 489 (Ala. 1986). The complaint was filed within the applicable statute of limitations.

The third party complaint is not barred by the legal statute of limitations or the doctrine of laches.

IV. THE THIRD PARTY COMPLAINT WAS PROPERLY FILED, AND THE OBJECTION WAS PROPERLY MADE TO ANY POSSIBLE DEFECT OF PLEADING (THIS ISSUE WAS NOT ADDRESSED BY THE TRIAL COURT OR RAISED IN ANY PLEADING OR PROCEEDING IN THE COURT BELOW, BUT IS RAISED BY THE APPELLEE, JONES MURRAY & STEWART, IN ITS BRIEF.)

Jones Murray & Stewart raises the novel question of the propriety of the Third Party Complaint. This was not raised by any answer, (R. 494-497; 626-629; 1098-1101;)

nor motion (R. 899-902). Neither was the matter considered by the trial court in its Order of Summary Judgment. (R. 1107-1109)

This Court generally disfavors considering matters not raised at the trial level. Cf. *Smith Water Authority v. City of Phenix City*, 436 So.2d 827 (Ala. 1983) *Simmons Machinery Co. Inc. v. R & R Brokerage, Inc.*, 409 So.2d 743 (Ala. 1981). Where no motion is filed which attacks the merits of the third party claim, the claim may not be dismissed with prejudice as Jones Murray & Stewart requests. See *McMillan v. Hunter*, 439 So.2d 153 (Ala. 1983) How can Jones Murray & Stewart claim that the trial court should have dismissed the third party complaint when they never requested the court below to do so.

At any rate, the theory of liability is one of indemnification. The original complaint sought a declaration, *inter alia*, that Stone was not an heir to the Williams estate. In turn, Stone argues that if she is declared not to be an heir, it is the fault of the third party defendants. While the Original Complaint did not seek damages, there is no doubt that the adverse ruling to Stone did cause her great pecuniary damage; a damage which she rightfully seeks indemnification from the third party defendants. The fact that Stone did not appeal the judgment on the Original Complaint in nowise affects her right to seek indemnification.

Lastly, there is no question but that the Third Party Claim "arises out of" the occurrence made the basis of the Original action. Favoring substance over form, the "third party complaint" may easily be viewed as a cross claim pursuant to A.R.C.P. 13(g); 19 and 20. This would in no

way act as an unfair detriment to Jones Murray & Stewart.

CONCLUSION

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Catherine Yvonne Stone respectfully requests that this Honorable Court reverse the judgment and remand the cause for further proceedings.

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CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 27th day of May, 1988.

/s/ Thomas W. Bowron, II  
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APPENDIX G-7

IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE,	)	
Third Party	)	
Plaintiff/Appellant	)	
vs.	)	
GULF AMERICAN FIRE &	)	
CASUALTY	)	S. Ct. No. 87-269
COMPANY; AMERICAN	)	
STATES INSURANCE	)	
COMPANY; JONES,	)	
MURRAY & STEWART, P.C.;	)	
IRENE SMITH,	)	
Third Party defendants/	)	
Appellees	)	

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ON APPEAL FROM THE CIRCUIT COURT OF  
MONTGOMERY COUNTY  
CIRCUIT COURT CASE NO.: CV 85-1316-K

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PETITION OF RANDALL HANK WILLIAMS FOR  
LEAVE TO APPEAR FOR PURPOSE OF SEEKING TO  
VACATE AND MODIFY OPINION OF JULY 5, 1989 AND  
FOR STAY OF ISSUANCE OF CERTIFICATE OF  
JUDGMENT PENDING FURTHER PROCEEDINGS

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IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE,	)	
Third Party	)	
Plaintiff/Appellant	)	
vs.	)	
GULF AMERICAN FIRE &	)	
CASUALTY	)	S. Ct. No. 87-269
COMPANY; AMERICAN	)	
STATES INSURANCE	)	
COMPANY; JONES,	)	
MURRAY & STEWART, P.C.;	)	
IRENE SMITH,	)	
Third Party defendants/	)	
Appellees	)	

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ON APPEAL FROM THE CIRCUIT COURT OF  
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PETITION OF RANDALL HANK WILLIAMS FOR  
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JUDGMENT PENDING FURTHER PROCEEDINGS

## I

## INTRODUCTION

As recognized by this Court in its July 5, 1989 opinion, this case is unique. The relief fashioned by the Court is equally unique. Petitioner Randall Hank Williams, Jr. ("Williams, Jr.") was not a party to this appeal, nor was he a party to the third-party complaint which is the subject of this appeal. Williams, Jr., one of the parties who initiated the underlying litigation by the filing of a declaratory judgment action against Appellant Stone, had no reason to be involved in the ancillary proceedings between Stone and the third-party defendants named by her. In the trial court, he had secured a judgment in his favor declaring that Stone was *not* entitled to any interest in the estate of Hiram "Hank" Williams ("the estate") and that Williams, Jr. was the sole heir of that estate. In the court below Williams, Jr. was *granted* the relief he sought. *Stone took no appeal from that judgment and thus it became res judicata.*<sup>1</sup> Nevertheless, the opinion of this Court may be construed to give Stone a significant interest in the estate *at the direct expense of Williams, Jr.* The Court's ruling came in proceedings to which Williams, Jr. was not a party and did not participate, and on claims alleging that others – not Williams, Jr. – were guilty of

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<sup>1</sup> In discussing *res judicata* in this petition, we are *not* talking about any *res judicata* effect of the 1967 and 1968 orders of the Circuit Court of Montgomery County. We are instead referring to the *res judicata* effect of the unappealed portions of the 1987 judgment entered by then Circuit Judge Kennedy.

fraud and other wrongdoing. This deprivation of Williams, Jr.'s interest in the estate and in the final, unappealed judgment which he secured below violates not only his rights to due process under the state and federal constitutions, but also ignores the important principles of finality embodied in *res judicata* and related doctrines.

For the reasons discussed herein, Williams, Jr. respectfully requests leave of this Court to appear before it for purposes of seeking to vacate and modify the July 5, 1989 opinion and further requests a stay of the issuance of the certificate of judgment in this matter pending further proceedings on this petition. He specifically requests the opportunity to file any brief the Court may deem appropriate and to present oral argument to this Court on the matters raised herein.

## II

### STATEMENT OF THE CASE

Williams, Jr. and other parties commenced this litigation by filing against Stone a petition for declaratory judgment (subsequently twice amended) in which, among other things, Williams, Jr. requested a declaration that Stone has no legal interest in the estate and that, in accordance with earlier orders of the Circuit Court of Montgomery County, Alabama, Williams, Jr. is the estate's sole heir.<sup>2</sup> Stone contended that the petition (the

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<sup>2</sup> The *second* amended complaint is the operative pleading. See particularly paragraph 4 of the prayer for relief, at p. 14. The Court's July 5, 1989 opinion, at footnote 2, incorrectly quotes from the *original* complaint, which was superseded by amended pleadings *before* the mandamus proceedings in this Court.

second amended complaint) failed to state a justiciable controversy and should be dismissed. When the trial court disagreed, Stone sought review in this Court by way of mandamus. In a unanimous panel opinion authored by Justice Adams, this Court held that the petition *did* state a justiciable controversy and that the litigation should proceed. *Ex parte Stone*, 502 So.2d 683 (Ala. 1986). In its opinion, this Court noted that Stone was claiming an interest in the estate adverse to that of Williams, Jr., that she was attacking long-standing orders of the Circuit Court which had previously decided the identity of the estate's heirs, and that "the declaratory judgment action filed by [Williams, Jr.] is . . . a viable means of settling this dispute." 502 So.2d at 686.

Back in the trial court, Stone answered the second amended complaint and counterclaimed, alleging in essence that she is the natural daughter of Hank Williams and that she was therefore entitled to share in the estate. She specifically averred the existence of a justiciable controversy *between her and Williams, Jr.* regarding whether he was the sole heir or whether, on the other hand, she had an interest in the estate. Williams, Jr. answered, *admitting the existence of the justiciable controversy alleged by Stone in her counterclaim.*

Shortly thereafter, Stone filed a third-party complaint against various parties, including Jones, Murray & Stewart, P.C., Gulf American Fire & Casualty Company, American States Insurance Company, and Irene Smith. Naturally, Williams, Jr. was not made a party to the third-party complaint, which, *by definition*, is the mechanism used by a defendant to bring in a *new* party to the action who is or may be liable to him for all or part of the

plaintiff's claim against him. See Committee Comments to Ala.R.Civ.P. 14. Significantly, Stone did not assert in her counterclaim against Williams, Jr. any of the claims regarding fraud, fraudulent concealment and conspiracy which she asserted against the third-party defendants. Stone sought damages against the alleged wrongdoers, but also sought, on the first claim for relief, to reopen the estate and secure her proportionate interest therein. *This latter relief was, for all practical purposes, the same relief Stone sought by her counterclaim against Williams, Jr., and which Williams, Jr. was contesting in his declaratory judgment action against Stone.*<sup>3</sup>

Williams, Jr. and the third-party defendants moved for summary judgment – Williams with respect to his second amended complaint and Stone's counterclaim,

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<sup>3</sup> As discussed below, Stone's third-party complaint was cognizable only to the extent that she was seeking *indemnification* from the third-party defendants in connection with relief which Williams, Jr. might get against her on his petition for declaratory judgment. While the damage claims made sense in *this* context, at least analytically, the request to reopen the estate clearly did not. The third-party complaint, by definition, would be viable only if Stone *lost* on the principal controversy with Williams, Jr. But if she did lose that controversy, obviously the estate could not be reopened because Williams would have been adjudicated in the principal action to be the sole heir and she would have been adjudicated to have no interest in the estate. Thus, as distinguished from the damage claims, Stone's request in her third-party complaint to reopen the estate was simply meaningless surplusage. Had Jones, Murray & Stewart, P.C., Irene Smith, and the two insurance companies been made additional parties to Stone's counterclaim, as permitted by Ala.R.Civ.P. 13(h), the claim would have made sense, at least procedurally.



and the others with respect to the third-party complaint. The circuit court *granted* all the motions and on July 14, 1987 entered an appropriate order and judgment. The court reserved ruling on the question of Stone's paternity, which was addressed in subsequent proceedings. In its order and judgment, the court described the controversy as follows:

[Williams, Jr.] seeks to have the Court declare that Stone has no entitlement to any proceeds or royalties from [the estate] . . . [and] that Williams, Jr. is the sole child and sole heir of Williams, Sr. and thus is the sole person with rights in and to [the estate] . . .

\* \* \*

In said counterclaim, Stone alleges that she is the natural daughter of Williams, Sr. and as such is entitled to one-half of the proceeds of his estate. She prays for the entry of judgment that establishes her paternity, and awards her her proportionate interest in [the estate].

After discussing the evidence and analyzing the parties' arguments, the trial court granted judgment *in favor of Williams, Jr.* on all issues raised by his second amended complaint and by Stone's counterclaim, with the exception of whether Stone is the biological child of Hank Williams. The court also granted judgment *against* Stone on her third-party complaint.

Because the paternity issue was not yet decided, the trial court's July 14, 1987 order was interlocutory and not subject to immediate appeal. The court adjudicated the paternity issue and entered a final order in the case on October 26, 1987. Under Ala.R.App.P. 4, any notice of appeal was accordingly due to be filed by December 7,

1987, the date 42 days after entry of the final order. On December 2, 1987, Stone filed notice of appeal from the circuit court's order dismissing Stone's third-party complaint. Stone did *not*, at that time or thereafter, appeal from the circuit court's final order in favor of Williams, Jr. on his seconded amended complaint or Stone's counterclaim. Those judgments thus became final and binding upon the passage of the 42nd day following October 26, 1987.

### III

#### ARGUMENT

A. *Introduction.* We begin by noting again that it was *this Court* which held that Williams, Jr.'s second amended complaint stated a justiciable controversy between Stone and him regarding their respective rights to the estate. Stone's subsequent counterclaim alleged the existence of the same controversy. When the circuit court adjudicated that controversy in Williams, Jr.'s favor - declaring him to be the sole heir and Stone to have no interest in the estate - Stone *accepted the ruling* and did *not* appeal it. Stone appealed *only* with respect to the decision dismissing her third-party complaint. The timely filing of a notice of appeal is jurisdictional, as *this Court* has held on many occasions, and the passage of the forty-second day makes the trial court's judgment final and binding on the parties to it. *Stewart v. Younger*, 375 So.2d 428 (Ala. 1979).

We also respectfully remind this Court of the well-established principle that where the appellant files notice of appeal with respect to only a specified judgment or

specified part of a judgment, this Court has *no jurisdiction* to review other judgments or issues from which no appeal was taken. *Threadgill v. Birmingham Board of Education*, 407 So.2d 129, 132 (Ala. 1981). Accordingly, this Court was without jurisdiction, in connection with its review of the dismissal of the third-party complaint, to review or overturn the circuit court's decision declaring Williams, Jr. to be the estate's sole heir, and Stone to have no interest in the estate, because Stone took no appeal from those judgments.

We also call to the Court's attention that Williams, Jr., having secured in the trial court the ruling which he sought and not being a party to the third-party complaint, did not participate in the appeal and was *not* before this Court. He was, instead, justifiably relying on the sanctity of the *unappealed* final judgments in his favor on his declaratory judgment complaint and Stone's counterclaim. In other words, having been declared in contested proceedings with Stone to be only person with an interest in the estate, Williams, Jr. believed his fight was over once Stone decided to forego an appeal of the judgment in his favor. His reliance on the favorable decision on his declaratory judgment action was reinforced, of course, by the fact that this Court had already held that resolution of that action was a proper way to settle the controversy between Stone and him regarding their respective rights in the estate.

If the Court's July 5, 1989, opinion is construed to actually give Stone an interest in the estate, it is plainly inconsistent with and contradictory of the unappealed final judgment in favor of Williams, Jr. on the declaratory judgment action recognized by this Court to be "a viable

means of settling [the] dispute" between Williams, Jr. and Stone regarding their respective interests in the estate. See 502 So.2d at 685-86.

B. *Res Judicata Precludes The Relief Awarded By This Court To Stone.* If it is the intention of this Court's July 5, 1989 decision to give Stone a share of the estate at the expense of Williams, Jr., the decision flatly violates the finality principles of res judicata.

Res judicata and its sub-part, collateral estoppel, are two separate rules or sets of rules for determining the conclusiveness of judgments. *Wheeler v. First Alabama Bank of B'ham*, 364 So.2d 1190, 1199 (Ala. 1978). Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit, on the same cause of action, involving the same parties or their privies. This "claim preclusion" doctrine prohibits the relitigation of all matters which were, or could have been, litigated in the prior action. *Century 21 Preferred Properties, Inc. v. Ala. Real Estate Comm'n.*, 401 So.2d 764, 768-70 (Ala. 1981). Stated otherwise, the elements necessary to establish a res judicata bar are as follows: (1) prior judgment rendered by court of competent jurisdiction; (2) prior judgment rendered on the merits; (3) parties to both suits substantially identical; and (4) same cause of action present in both suits. *Wheeler*, 365 So.2d at 1199.

Collateral estoppel operates where the subsequent suit between the same parties (or their privies) is not on the same cause of action. *Wheeler*, 364 So.2d at 1199. Requirements for collateral estoppel (sometimes referred to as "issue preclusion") are (1) issue identical to one involved in previous suit; (2) issue actually litigated in

prior action; and (3) resolution of the issue was necessary to the prior judgment. If these elements are present, the prior judgment is conclusive as to those issues actually determined in the prior suit. *Id.* "In sum, collateral estoppel is a doctrine designed to preclude a person who has once litigated an issue in circumstances affording him a full and fair opportunity to present his arguments from contesting the same issue in a different case if it was necessarily determined in the first case." 1B J. Moore, Moore's Federal Practice ¶ 0.411 [2] (2d ed. 1988).

Williams, Jr. filed a declaratory judgment action which was recognized by this Court to be "a viable means" of settling the dispute between Williams, Jr. and Stone regarding their respective interests in the estate. Stone, too, asserted the existence of a justiciable controversy in her counterclaim. Declaratory judgments are governed by res judicata principles just as are other judgments. As the Restatement (Second) of Judgments §33 states:

A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action.

Stone was obviously a party to the proceedings in the trial court and the question of the respective rights of her and Williams, Jr. in the estate was unquestionably adjudicated on the second amended complaint and the counterclaim. Adjudication of those rights were without doubt necessary to resolution of the contested claims, and Stone had a full and fair opportunity to present her arguments.

The judgments in Williams, Jr.'s favor on those claims were not appealed and thus became final and binding on Stone. As Professor Moore has written:

*If an appeal is taken from only part of the judgment, the remaining part is res judicata, and the vacation of the portion appealed from and remand of the case for further proceedings does not revive the trial court jurisdiction of the unappealed portion of the judgment. (emphasis added)*

1B J. Moore, *Moore's Federal Practice* ¶ 0.404 [4.-4] (2d ed. 1988). See also *Reed v. Allen*, 286 U.S. 191, 198-200 (unappealed judgment in first action is valid and subsisting and could not be attacked in a second action).

This Court's decision of July 5, 1989 – if it is intended to take part of the estate from Williams, Jr. and give it to Stone – effectively revokes and rescinds the binding, previously existing final judgment in Williams, Jr.'s favor. Yet, *res judicata* or collateral estoppel should surely bar Stone from receiving such a ruling at the expense of Williams, Jr. All the elements necessary to invocation of the finality doctrine unquestionably are present. Moreover, *res judicata* applies even though the judgment may have been *wrong* or rested on a legal principle subsequently *overruled* in another case. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L.Ed 2d 103, 101 S.Ct. 2424 (1981).

Looking at the situation from a slightly different perspective emphasizes the error made by this Court. Nothing required Stone to pursue her claims against Jones, Murray & Stewart, P.C. and the other parties by way of an impleader action. Rule 14 claims are *not* compulsory and may be pursued in an entirely independent

action. See 1 Ala. Rules Civ. Proc. 2nd Ed. (Lyons), §14.1. Had the claims been pursued in an independent action, one could hardly argue that Stone would not have been barred by res judicata or collateral estoppel on any claim to a share of the estate. Such an action certainly could not have proceeded in the absence of Williams, Jr. as a party defendant. See Ala.R.Civ.P. 19(a). Williams, Jr. would obviously have asserted res judicata as a bar to the action and he just as obviously would have succeeded with that defense. This result should not be changed by the fact that Stone pursued her claim under Rule 14 rather than in an independent action. We will address this point again in the discussion of how the Court's adjudication of Stone's third-party claim (without a trial) deprived Williams, Jr. not only of his rights under Rule 19(a), but also of due process of law.

Res judicata and collateral estoppel have the dual purpose of protecting litigants from the burden of multiple litigation of the same issue and of promoting judicial economy by preventing needless litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 58 L.Ed. 2d 552, 909 S.Ct. 645. The American courts have long recognized that "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525, 75 L.Ed 1244 (1930). The United States Supreme Court has stressed that "[t]he doctrine of res judicata is not a mere matter of practice or procedure . . . It is a rule of fundamental and substantial justice, 'of public policy and private peace,' which should be cordially regarded



and enforced by the courts . . . " *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299, 61 L.Ed. 1148, 37 S.Ct. 506 (1917).

This Court should not be reluctant to declare Stone's claim to share in the estate at Williams, Jr.'s expense barred by *res judicata* and collateral estoppel. The elements of those affirmative defenses clearly exist, as discussed above. When these elements are present, there is simply "no principle of law or equity which sanctions the rejection by a . . . court of the salutary principle of *res judicata*." *Heiser v. Woodruff*, 327 U.S. 726, 733, 90 L.Ed. 970, 66 S.Ct. 853 (1946); *Accord Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. at 401. As discussed below, Stone could easily have protected herself from the *res judicata* bar, and should not be excused from the consequences of her calculated litigation decisions.

C. *The Court's Decision Violates Williams, Jr.'s Due Process Rights.* The relief apparently fashioned by this Court's order includes (i) "that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams", (ii) a reopening of the estate and (iii) a remand of this cause "for a full hearing and settlement, in a manner consistent with this opinion." Throughout the administration of the estate until it was closed in 1975, Williams, Jr. was the sole distributee of the assets and proceeds of the estate under binding orders of the circuit court. If the Court's July 5, 1989 opinion actually contemplates payment to Stone of a portion of the monies that were paid to Williams, Jr. on or after August 5, 1985 as part of the "reopening" of the estate, plus a share in future revenues, the decision deprives Williams, Jr. of property rights which vested in him in 1975, at the

latest, and which were *confirmed* to be his sole property by the final judgment of the circuit court on Williams, Jr.'s second amended complaint and Stone's counterclaim. This deprivation of vested property rights – in the estate as well as in the final 1987 circuit court judgments in his favor – came in a proceeding in this Court to which Williams, Jr. was not a party and in which he was not heard. Williams, Jr. was accordingly denied due process of law as guaranteed by section 6 of the Alabama Constitution and the fourteenth amendment to the federal Constitution.

There is more here, however, than a denial of procedural due process. If this Court fails to recognize the binding effect of the circuit court's unappealed decision in favor of Williams, Jr. and against Stone on the question of who has an interest in the estate, and instead takes property from Williams, Jr. and gives it to Stone, the Court will violate Williams' right to substantive due process as well. There is no basis for ignoring the binding, pre-existing lower court orders, and to do so would be to act arbitrarily. As Professor Moore has said in commenting upon the failure of a court to give *res judicata* effect to binding prior orders:

The due process clause of the Fourteenth Amendment should preclude a state from subsequently restricting or refusing effect to one of its judgments as *res judicata* beyond a certain point. The reasons for this conclusion are: *judicial rights were vested by the judgment; they may be divested by the usual judicial remedies of direct attack, and remedies to enjoin or otherwise obtain relief from the judgment; just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under*

*a valid judgment.* And a state constitutional due process provision would similarly act as a check upon state power to deprive a party unjustly of vested rights in a judgment rendered by the state court. (emphasis added)

1B J. Moore, Moore's Federal Practice, ¶ 0.406 [2].

Ala.R.Civ.P. 19(a) is also designed to insure that persons are not deprived of property rights in litigation to which they are not a party. The rule requires that a person be made a party to a claim if he claims an interest in the subject matter [sic] of the action and is so situated that disposition of the action in his absence may impair or impede his ability to protect that interest. Here, Williams, Jr. had gone his way justifiably believing that he had prevailed in his dispute with Stone over ownership to the estate. Yet, in a proceeding in this Court to which Stone – but not Williams, Jr. – was a party, the Court has *taken from Williams, Jr.* a valuable property interest and given it to Stone. All this was done *without any attempt* to have Williams, Jr. before the Court as Rule 19(a) and the respective due process clauses would require. Of course, had Williams, Jr. been a participant to the appeal, he would have been able to point out there – rather than in these papers for the first time – how Stone's failure to appeal the adverse judgments on the declaratory judgment action and the counterclaim preclude her under res judicata from getting a share of the estate at the expense of Williams, Jr.<sup>4</sup>

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<sup>4</sup> As discussed in the next section, the root problem was in this Court treating the third-party claim as something other than a claim for indemnity. Had it been treated as an impleader

(Continued on following page)

D. *The Court's Decision Ignores The Nature and Purpose Of An Impleader Action.* The only ruling which Stone appealed was the one dismissing her Rule 14 impleader action against Jones, Murray & Stewart, P.C., Irene Smith, and the insurance companies. The province of a Rule 14 claim is, of course, "limited to instances of contractual indemnification from a claim or the indemnification that flows from circumstances where the defending party is entitled to stand in the shoes of claimant *if the defending party is liable to the claimant.*" 1 Ala. Rules of Civ. Proc. 2nd Ed (Lyons), ¶ 14.1 (emphasis added). As the Committee Comments to the rule observe, "there may be no liability to the original defendant unless and until the original defendant is held liable to the original plaintiff."

Stone clearly intended for her third-party claim to be one for indemnity, notwithstanding the inclusion of a prayer for relief directed to reopening the estate. In Stone's reply brief, written in response to a claim by one of the third-party defendants that hers was not truly an impleader action, she wrote as follows:

[T]he theory of liability is one of *indemnification* . . . Stone argues that if she is declared not to be an heir [to the Williams estate], it is the fault of the third party defendants. While the

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(Continued from previous page)

action – an action to which Williams, Jr. would logically *not* be a party – it would obviously have not been appropriate to award Stone an interest in the estate. Rather, if she were entitled to relief, it should have been in damages against the third-party defendants who, because Stone lost on the declaratory judgment action, were in turn liable to her. *This* relief could be granted in Williams, Jr.'s absence.

Original Complaint did not seek damages, there is no doubt that the adverse ruling to Stone did cause her great pecuniary damage; a damage which she rightfully seeks *indemnification* from the third party defendants. The fact that Stone did not appeal the judgment on the Original Complaint in nowise affects her right to seek *indemnification*.

Stone reply brief at 13-14 (emphasis added).<sup>5</sup>

Of course, Stone had to be seeking indemnification, for that is the only province of a third-party action. She filed the action because she recognized the possibility that Williams, Jr. would prevail on his declaratory judgment action (already sanctioned by this Court in the mandamus proceedings) and on her counterclaim. In an effort to protect herself, Stone named third-party defendants who, she asserted, were liable to her if, in fact, Williams, Jr. succeeded in his claim that she had no share in the estate. When Williams, Jr. did prevail on his claim, Stone elected not to appeal that decision, and instead to appeal only with respect to the third-party complaint.

The *critical point* is that the third-party claim is *meaningless* unless one first assumes that Stone has *lost* on the declaratory judgment action filed against her by Williams, Jr. As noted in the Committee Comments, there can be no liability on a Rule 14 claim unless *first* the Rule 14 claimant has *lost* her dispute with the plaintiff.

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<sup>5</sup> By stating "[t]he fact that Stone did not appeal the judgment on the original complaint in nowise affects her right to seek *indemnification*," Stone implicitly recognizes that her failure to appeal on the original complaint *does* preclude her from seeking a portion of the estate at Williams, Jr.'s expense.

Here, in losing her dispute with the plaintiff, Williams, Jr., Stone was adjudicated to have no interest in the estate because Williams, Jr. was reaffirmed as the sole heir. Without this determination first being made, there would be no field of operation for Stone's third-party complaint. Yet this Court, in its July 5, 1989 order, effectively *rescinds* this original determination and awards Stone relief which is directly antagonistic to that determination. In reaching the result it reached – apparently giving Stone an interest in the estate – this Court has treated Stone's appealed claim as something *other* than an impleader action. But in turning it into something else, the Court has ignored the fact that, if the claim is something more than or different from a true third-party claim, Williams, Jr. would have to be a party to it in order to satisfy due process and Rule 19(a). With all respect, the Court has turned the case on its head and has reached a result which is wholly illogical and in complete disregard of established law and practice.

However egregious this Court may find the conduct of the third-party defendants to be, Stone's appeal and the jurisdiction of this Court are limited to claims for *indemnity* arising out of the third-party complaint. The proper relief to be awarded Stone, if any, is damages against the third-party defendants, assuming there is evidence that it was through their wrongdoing that Stone has been denied by the Alabama courts a share in the estate. The only conceivable purpose in reopening the estate would be to calculate the measure of damages suffered by Stone as the result of this Court's determination of fraud by the third-party defendants.

E. *Stone Could Have Protected Her Claim To A Portion Of The Estate.* Stone wished to preserve her right to claim an interest in the estate, she could have done so easily enough. She merely had to take an appeal from the trial court's decision against her on that issue, and not just from its dismissal of the third-party complaint. See 9 J. Moore's Federal Practice ¶ 203.18 (2d ed. 1988). In those circumstances, *res judicata* would not have attached, all the necessary parties would have been before the Court, and the Court could have reversed any or all of the trial court's rulings. The Court could have reversed the circuit court's rulings in Williams, Jr.'s favor to the extent necessary to allow the relief deemed appropriate by the Court. See *Reed v. Allen*, 286 U.S. at 198. But Stone did *not* appeal generally, and she must live with her calculated choices. That is, a party is *not* excused from the consequences of failing to take an appeal, notwithstanding the harsh result which might follow. See *Federated Dept. Stores v. Moitie*, 452 U.S. at 394 (relitigation of unappealed adverse judgment held barred by *res judicata*, even though judgment rested on overruled principle and similar actions were successfully appealed). Stone must be required to accept the consequences of her litigation decisions just like every other litigant. And, of course, this Court does not have the right or the power to relieve her of those consequences even though the Court may perceive her decisions to have been imprudent.

F. *Other Issues.* If the Court grants this Petition and agrees to hear Williams, Jr., there are other issues which should be raised. We believe, for example, that the Court erred in its decision that an adoption after the death of the reputed father does not bar the adopted person from



pursuing a judicial determination of paternity for purposes of rights in intestate succession under *Ala. Code* §43-8-48 and §26-17-6(e) (opinion at 3940). We believe the Court has fundamentally misconceived the nature and purpose of the adoption exception and has misconstrued the language of the statutes. These issues – which have far reaching ramifications for the law of intestate succession in Alabama – were briefed and argued in detail to the circuit court, but, of course, Williams, Jr. did not have the opportunity to participate in the proceedings before this Court.

Further consideration of the precedential effect of this Court's ruling would also be wise and appropriate. The relief of reopening the estate for any purpose other than determining the amount of damages recoverable from the third-party defendants is not only improper and unnecessary with respect to the appeal before this Court, but has serious consequences for the jurisprudence of the State of Alabama. As noted in the dissent, such relief calls into question the finality of all judgments entered in this state. Reopening the estate after almost fourteen (14) years for the purpose of a redistribution or reallocation of its assets and the proceeds therefrom calls into question the title of all assets distributed by estates during such time. Indeed, given the lack of adequate parameters for limitation of such relief, the title to all estate distributions in this state would be subject to question if the opinion stands.

V

CONCLUSION

Based upon the foregoing, Williams, Jr. respectfully requests leave to appear before this Court for the purpose of seeking to vacate and modify the opinion consistent with the preceding argument. He requests the opportunity to file such additional papers and briefs as the Court may deem appropriate, and requests the opportunity to be heard in oral argument. Williams, Jr. further requests a stay of the issuance of the certificate of judgment pending further proceedings on this petition.

Respectfully submitted,

/s/ David R. Boyd  
DAVID R. BOYD

/s/ Sterling G. Culpepper, Jr.  
STERLING G. CULPEPPER, JR.

OF COUNSEL:

BALCH & BINGHAM  
Post Office Box 78  
Montgomery, Alabama 36101  
205/834-6500

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record in this cause by placing same in the United States Mail, postage prepaid, this the 19th day of July, 1989:

David Cromwell Johnson, Esq.  
Thomas W. Bowron, II, Esq.  
300 North 21st Street  
Suite 900, Title Building  
Birmingham, Alabama 35203

James F. Hampton, Esq.  
567 South Hull Street  
Montgomery, Alabama 36104

James E. Williams, Esq.  
P. O. Box 1267  
Montgomery, Alabama 36102

Robert C. Black, Esq.  
Hill, Hill, Carter, Franco, Cole & Black  
P. O. Box 116  
Montgomery, Alabama 36195

/s/ Sterling G. Culpepper, Jr.  
OF COUNSEL

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## APPENDIX H-1

## PETITION FOR LETTERS OF ADMINISTRATION

THE STATE OF ALABAMA,           )       PROBATE  
   )       COURT  
MONTGOMERY COUNTY           )

( In the Matter of the Estate of  
( Hiriam (Hank) Williams,  
( Deceased.

To the HON. Wm. W. Hill, Judge of Probate Court, Montgomery County:

The petition of the undersigned, Lillian S. Stone respectfully represents that Hiriam Williams departed this life at Oak Hill, West Virginia on or about the 1st day of January, 1953, leaving no last will and testament; so far as your petitioner knows or believes; and that the said Hiriam Williams was at the time of his death an inhabitant of this County of Montgomery and died seized and possessed of real and personal estate in this State of Alabama consisting chiefly of a cashiers check on The First National Bank of Montgomery in the sum of Four Thousand Dollars (\$4,000.00); miscellaneous personal property and jewelry of the approximate value of One Thousand Dollars (\$1,000.00), all of said real and personal estate being estimated to be worth about Five Thousand Dollars (\$5,000.00) and probably not more; that the names, residence, ages and conditions of the heirs and distributees of the estate of the said decedent, so far as your petitioner knows or believes are as follows, to-wit:

Billie Jean Jones Eshliman Williams, who states she is the widow, over 18 and under 21, residing at 912 Modica Street, Bossier, City Louisiana; Randall Hank Williams, Jr., a minor, approximately 3 1/2 years old, residing with and under the care and custody of his mother, Audrey Williams, Franklin Road, Nashville, Tennessee; Mrs. Irene Williams Smith, sister, over 21 years of age, residing at 199 Smith Place, Apartment 77, Williams Court Apartments, Portsmouth, Virginia; Elonzo H. Williams, father, over 21 years of age, residing at McWilliams, Alabama; and Lillian S. Stone, mother and the petitioner herein, over the age of 21 years, residing at 318 North McDonough Street, Montgomery, Alabama;

that your petitioner, being the mother of said deceased, an inhabitant of this State, above the age twenty-one years, and in no respect disqualified under the law from serving as an administratrix believing that the said estate should be immediately administered, to the end that the said property may be collected and preserved for those who shall appear to have a legal right or interest therein, does, therefore, by virtue of her right under the statute pray that your Honor will grant Letters of Administration on said estate to Lillian S. Stone upon her entering into bond in such sum as is required by the statute, and which security or securities as shall be approved by your Honor.

/s/ Lillian S. Stone  
Petitioner.

H-1.3

THE STATE OF ALABAMA,       )  
  )  
MONTGOMERY COUNTY        )

Lillian S. Stone being duly sworn, deposes and says  
that the facts averred in the above petition are true.

/s/ Lillian S. Stone  
Lillian S. Stone

Subscribed and sworn to before me  
this 6 day of January, 1953.

/s/ Robert B. Stewart  
Notary Public, Montgomery County.

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APPENDIX H-2

AGREEMENT UPON DISTRIBUTIVE SHARE OF ESTATE

WHEREAS, Hiram Williams, also known as Hank Williams, died intestate on January 1, 1953, and a controversy has arisen as to the residence and domicile of the said Hank Williams at the date of his death, such residence and domicile having been claimed both for the State of Tennessee and for the State of Alabama; and,

WHEREAS, Lillian S. Stone, mother of Hank Williams, has qualified as Administratrix of the Estate of Hiram (Hank) Williams, Deceased, in the Probate Court of Montgomery County, Alabama, and Third National Bank in Nashville has qualified as Administrator of the Estate of Hiram (Hank) Williams, Deceased, in the County Court of Davidson County, Tennessee; and,

WHEREAS, Third National Bank in Nashville has filed its petition, requesting that it be allowed to file its final accounting and receive its discharge as such Administrator; and,

WHEREAS, Billie Jean Jones Eshliman Williams, claiming as widow of Hank Williams, deceased, has asserted claims and interests as such widow in the estate of such deceased, which claims and interests have been disputed by and on behalf of other persons having interests in said estate; and,

WHEREAS, Billie Jean Jones Eshliman Williams has filed her petition in the County Court of Davidson County, Tennessee, requesting that she be allowed to qualify and act as Administratrix of the estate of Hiram Hank Williams, deceased, in Davidson County, Tennessee, upon



the discharge of Third National Bank in Nashville, and Lillian S. Stone has filed her petition in the County Court of Davidson County, Tennessee, asking that she be allowed to qualify and act as Ancillary Administratrix, under an administration proceedings ancillary to the proceedings pending in Montgomery County, Alabama, upon the acceptance of the resignation and discharge of Third Bank in Nashville; and,

WHEREAS, Hiriam (Hank) Williams was survived by a minor son, Randall Hank Williams, now four years of age, who is in the custody and control of his mother, Audrey Mae Williams, but Jack Norman, an attorney at the Nashville Bar, has been appointed and has qualified in the County Court of Davidson County, Tennessee, as guardian of said Randall Hank Williams; and,

WHEREAS, in furtherance of her claim, Billie Jean Jones Eshliman Williams, has filed a suit under the style "Mrs. Hank (nee Billie Jean Jones) Williams vs. Audrey Mae Sheppard, No. 321-696, Civil District Court, Orleans Parish, Louisiana" asserting certain claims as widow of Hank Williams, deceased, and also has filed suit under the style "Mrs. Hank Williams v. Audrey Mae Williams, et al, Civil Docket No. 1691, in the United States District Court for the Middle District of Tennessee, Nashville Division", also making certain claims as widow of Hank Williams, deceased; and,

WHEREAS, the interested parties have agreed upon a satisfactory settlement of the rights and interests of the said Billie Jean Jones Eshliman Williams in the estate of Hank Williams, deceased, as embodied hereinafter, which agreement they desire to be made a matter of record, and,

if necessary, be submitted to any proper court for approval, if approval is required;

NOW, THEREFORE, for and in consideration of the premises, it is agreed by and between Billie Jean Jones Eshliman Williams, for herself, Jack Norman as guardian of Randall Hank Williams, a minor, and Lillian S. Stone, Administratrix of the Estate of Hiriam (Hank) Williams, Deceased, that:

1. Billie Jean Jones Eshliman Williams will withdraw and dismiss her petition in the County Court of Davidson County, Tennessee, seeking to be appointed as Administratrix of the estate of Hank Williams, deceased, and will withdraw any objection to the appointment of Lillian S. Stone as Ancillary Administratrix of the Estate of Hank Williams, Deceased. She also will dismiss her suit under the style "Mrs. Hank (nee Billie Jean Jones) Williams v. Audrey Mae Sheppard, No. 321-696, Civil District Court, Orleans Parish, Louisiana", and will pay the court costs incident to the filing and dismissal of such suit. She also will dismiss her suit under the style "Mrs. Hank Williams v. Audrey Mae Williams, et al, Civil Action File No. 1691, in the United States District Court for the Middle District of Tennessee, Nashville Division", court costs incident to the filing and dismissal of such suit to be paid by the estate of Hiriam (Hank) Williams, deceased.

2. From the first distributable income coming into the hands of Lillian S. Stone, as Administratrix or Ancillary Administratrix, there shall be paid over to Billie Jean Jones Eshliman Williams the sum of Thirty Thousand Dollars (\$30,000.00), in cash, which amount the said Billie Jean Jones Eshliman Williams agrees to accept, and does

accept, as her full distributive share as widow, or otherwise, in the estate of Hiriam (Hank) Williams, deceased.

3. Billie Jean Jones Eshliman Williams, in consideration of this agreement and the payment to her of said portion of the distributable income of said estate, does specifically release, discharge and quitclaim all her rights and interests, of any kind, nature, character or degree, now existing or which might hereafter at any time arise as widow, surviving spouse, legal wife, common law wife, or putative wife of Hiriam (Hank) Williams, deceased, in and to any part or portion of the estate of Hiriam (Hank) Williams, deceased, in anything of value owned by Hiriam (Hank) Williams at his death or accruing to his benefit, or for the benefit of his widow, his next-of-kin, his personal representative, or to his estate because of or after his death, in either separate or community property, real, personal or mixed, in being or hereafter to come into being, and all and any claims to homestead, dower, widow's allowance or preferences, usufructs, marital portions, year's support, survivorship or succession rights, or specific exemptions in either specific personalty, general personalty, cash or real property, and including any right to administer the estate of Hiriam (Hank) Williams, deceased, by herself or through others. The foregoing description shall not be in any manner construed as a limitation of the extent of the release of the rights or interests, or claims of rights or interests of Billie Jean Jones Eshliman Williams in the estate of Hiriam (Hank) Williams, deceased, but are illustrative of her general purpose and intent to accept the above mentioned sum as her full share or interest in said estate, and to renounce every claim of any degree or

extent which she might have, or hereafter could assert, in said estate, as the same now exists, or may hereafter be increased in any manner, form or degree, and from any source.

4. Billie Jean Jones Eshliman Williams in like manner does release and quitclaim any and all claims or interest which she may now [sic] or hereafter have or heretofore has asserted in and to the horse "Highlight Merry Boy" (Tennessee Walking Horse Breeders' Association, Registration #481665) which was the property of Hiriam (Hank) Williams at the time of his death, and will give to the Administratrix any information which she has as to the present location of such horse; further releases and quitclaims to the estate her interest in and claim to the saddle used with said horse, and agrees to deliver said saddle to the estate; further releases and quitclaims to the estate her interest in the claim to two boxes of Hiriam (Hank) Williams' songbooks published by Acuff-Rose Publications, or the proceeds thereof, and agrees to deliver to the estate all such books now in her possession; further releases and quitclaims her interest in and claim to three (3) pieces of luggage belonging to Hiriam (Hank) Williams, at his death, and will deliver any such luggage, which is now in her possession to the estate; and further releases and quitclaims to Lillian S. Stone, individually, her interest and claim to one large shipping or storage trunk, the property of Lillian S. Stone, and agrees to return said trunk to Lillian S. Stone. It is not the intention of this instrument to bind any of the parties hereto regarding their rights, if any, under the Old Age and Survivors' insurance regulated by the Federal Government

but all such rights, if any, shall be determined by the proper agent or agencies of the Federal Government.

5. Billie Jean Jones Eshliman Williams will execute the 1952 Income Tax Return, and if necessary the 1953 Income Tax Return, for Hiriam (Hank) Williams as a joint return. She also agrees that she will execute any and all other documents, deeds, instruments, transfers, or bills of sale or assignments as may now or hereafter be necessary or required to carry out the intent and purpose of this agreement.

6. Billie Jean Jones Eshliman Williams has been engaging in the business of making personal appearances for theatrical engagements, appearance by radio and by television, and through other theatrical or entertainment media, under the name "Mrs. Hank Williams". She agrees that it is to the best interests of the estate of Hiriam (Hank) Williams that she discontinue, and she hereby agrees that she will terminate such appearances from and after the 16th day of September, 1953, and that she will discontinue the use of the name "Hank Williams" or "Mrs. Hank Williams" in any manner or form, in any business or professional way, or through any media of advertising, whether by newspaper, radio, television, hand bill, or other form of advertising.

7. By the execution of this instrument, it is intended that after the receipt of such sum of Thirty Thousand Dollars (\$30,000.00) said Billie Jean Jones Eshliman Williams will make no further claim, and will have no further claim in and to any property in any form, real,

personal or mixed, contract or chose in action, now constituting or hereafter to constitute in any form a part of the estate of Hiriam (Hank) Williams, deceased.

8. Each of the parties signing this instrument does represent that he or she is more than 21 years of age, and where executed in a representative capacity is authorized to execute this document. It is understood that this contract shall be read and construed as a contract executed under the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties hereto have affixed their respective signatures on this 19 day of August, 1953.

Witnesses to Signatures:

/s/ W. F. Carpenter

/s/ Billie Jean Jones  
Eshliman Williams  
Billie Jean Jones  
Eshliman Williams

/s/ Lillian S. Stone  
Lillian S. Stone,  
Administratrix and  
Ancillary Administratrix  
of the Estate of  
Hiriam (Hank) Williams,  
Deceased.

/s/ May Bell Wolfe

/s/ Alice D. Mulloy

/s/ Jack Norman  
Jack Norman, Guardian  
of Randall Hank  
Williams, a Minor

/s/ W. F. Carpenter

Mrs. Audrey Mae Williams, mother of Randall Hank Williams, also executes this instrument as evidence of her ratification of the terms thereof.

/s/ Audrey Mae Williams  
Mrs. Audrey Mae Williams

APPROVED:

/s/ Goodpasture, Carpenter & Dale  
Attorney for Billie Jean Jones  
Eshliman Williams

/s/ Robert B. Stewart  
Attorney for Lillian S. Stone,  
Administratrix, etc.

/s/ Jack Norman  
Attorney for Jack Norman,  
Guardian, etc.

/s/ Carmack Cochran  
Attorney for Mrs. Audrey Mae Williams  
\_\_\_\_\_



APPENDIX H-3

IN THE MATTER	:	IN THE CIRCUIT COURT
OF THE ESTATE OF	:	OF MONTGOMERY
HIRAM [sic] (HANK)	:	COUNTY, ALABAMA,
WILLIAMS, DECEASED	:	IN EQUITY
	:	Case No. 25056

PETITION FOR ORDER REQUIRING  
ADMINISTRATRIX TO MAKE FINAL SETTLEMENT

Come your petitioners, Audrey Mae Williams, as the Mother, Custodian and Guardian of Randall Hank Williams, a minor over the age of fourteen years, and also the said Randall Hank Williams, a minor by and through Audrey Mae Williams, as his Mother, Custodian and Guardian, and respectfully represent and show unto the Court as follows:

1. That your petitioner Audrey Mae Williams is over the age of twenty-one years and resides in Nashville, Tennessee; that she is the mother of the minor petitioner, Randall Hank Williams, who is over the age of fourteen years; that she now has, and has had since her divorce from Hiram [sic] (Hank) Williams, the father of said minor petitioner, which decree of divorce was rendered on July 10, 1952, the legal custody of said minor, Randall Hank Williams; that she and the said Randall Hank Williams both now reside, as aforesaid, in Nashville, Davidson County, Tennessee.

2. That your petitioner Randall Hank Williams became fourteen years of age on May 26, 1963; that, upon his arrival at the age of fourteen years, he exercised his right and privilege, pursuant to the statutes and laws of the State of Alabama, to designate and nominate his

mother, the said Audrey Mae Williams, as Guardian of his estate; that your petitioner Audrey Mae Williams has been heretofore appointed, and has qualified, and is now acting as Guardian of the person and estate of the said Randall Hank Williams by by decree of the Chancery Court, Davidson County, Tennessee, in that certain cause entitled "Audrey Mae Williams vs Randall Hank Williams," Rule No. 84663, decree entered in Minute Book 189, at Page 324; that she has executed and filed in said cause, pursuant to the instructions of said Court, a good and sufficient bond with The Travelers Indemnity Company as surety, in the penal sum of Six Hundred Thousand (\$600,000) Dollars, which is in excess of the value of the assets constituting the Guardianship Estate of said minor according to the last report filed by the respondent Irene W. Smith, as his Guardian by appointment of the Probate Court of Montgomery County, Alabama.

3. That the Guardianship Estate of the said Randall Hank Williams, a minor, is the sole distributee of the administration of the estate of his deceased father, Hiram [sic] (Hank) Williams; that the respondent Irene W. Smith has been heretofore appointed and has been serving as Administratrix of the Estate of Hiram [sic] (Hank) Williams, Deceased; that said Administratrix is a resident of the State of Texas; that petitioners are informed, and upon such information and belief state and aver, that all debts of said estate have been paid and that there is no longer any need or occasion to continue the administration of said estate; that any further activities in connection with the Estate of Hiram [sic] (Hank) Williams, Deceased, which may be necessary, can be equally as well and much more economically performed by the Guardian

of the estate and person of the said Randall Hank Williams, who, as hereinabove averred, is the sole distributee of the administration of the estate of his father, the said Hiram [sic] (Hank) Williams; that said administration should now be settled and terminated and said respondent Irene W. Smith, as such Administratrix, should be required to make final settlement of said estate and to transfer the assets and interests therein of the said Randall Hank Williams to your petitioner Audrey Mae Williams, as his Guardian.

4. That your petitioner, Randall Hank Williams, is the sole and only distributee of the estate of his father, but the administrator has suggested that there are, or might be, certain other persons who have, or may claim to have, an interest in said estate. That the best interests of the estate of Hiram [sic] (Hank) Williams, and those persons beneficially interested therein, will be served by said estate being terminated at the earliest practical date.

5. That the pendency of said estate has resulted in excessive taxes, excessive costs of administration which necessarily result from the amount of time required of counsel for the administrator in caring for said estate, undue complications in the relationship between the petitioners hereunder and certain recording and publishing companies who had contracts with the decedent at the time of death that still yield certain income to the estate, and has and does continue to unduly interfere with the planning of the future career and estate of petitioner, Randall Hank Williams.

6. That counsel for the administrator has stated that he had been informed and believes that there is a possibility of certain changes in the Copyright Laws of the

United States which, if made, would necessitate the existence of an administrator in connection with the renewal of certain copyrights belonging to estate; should such statutory amendment be made, all of which is doubtful, this estate could be reopened, or a new administrator could be appointed, and the mere pendency of a possible legislative enactment, which may not occur, neither is nor should be a valid reason for maintaining this estate open.

7. Petitioners offer to do equity in the matter, as they may be directed by this Court.

WHEREFORE, THE PREMISES CONSIDERED, petitioners pray that Irene W. Smith, as such Administratrix, be made a party to this cause by proper process and that copy of this petition and of the date set for the hearing of same, be served upon the said Irene W. Smith, as such Administratrix, or upon Robert B. Stewart, Esq., her counsel of record; and, further, that this Court will, upon the hearing of this petition, order and direct that the said Irene W. Smith, as Administratrix of the Estate of Hiram [sic] (Hank) Williams, shall forthwith make out and file a complete statement and accounting of her actions and transactions as Administratrix of the Estate of Hiram [sic] (Hank) Williams, Deceased, and that she shall forthwith make distribution of the assets of said estate to the lawful distributee, and, further, that this Court will grant such other, further and different relief as in equity and good conscience petitioners may be entitled, as they will ever pray, etc.

/s/ Audrey Williams  
As Mother, Custodian and  
Guardian of Randall  
Hank Williams, a Minor

H-3.5

/s/ Randall Hank Williams  
RANDALL HANK WILLIAMS,  
A Minor

PETITIONERS

STATE OF TENNESSEE  
DAVIDSON COUNTY

BEFORE ME, Mary Claire Rhodes, a Notary Public in and for said County in said State, personally appeared Audrey Mae Williams, known to me, who, being by me first duly sworn, on oath deposes and says: that the facts averred in the foregoing petition are true and correct to the best of her knowledge, information and belief.

/s/ Mary Claire Rhodes

SWORN to and subscribed before me this 7th day of March, 1967.

/s/ Mary Claire Rhodes  
Notary Public  
Davidson County, Tennessee  
My Commission Expires July 27,  
1969

ATTORNEYS FOR PETITIONERS:

W.D. PARTLOW, JR.  
TUSCALOOSA, ALABAMA  
and

J. M. WILLIAMSON  
P.O. BOX 64  
URBANA, ILLINOIS

by /s/ W. D. Partlow, Jr.

## APPENDIX H-4

IN THE MATTER OF	:	IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM:	:	OF MONTGOMERY
"HANK" WILLIAMS,	:	COUNTY, ALABAMA
DECEASED	:	IN EQUITY, NO. 25056

## ANSWER

Now comes Irene W. Smith, as Administratrix of the Estate of Hiriam "Hank" Williams, and for answer to the petition of Audrey Mae Williams, seeking a final settlement, says as follows:

1. She admits the jurisdictional allegations of this paragraph and denies all other allegations.
2. She denies the allegations of paragraph 2.
3. She admits that Irene W. Smith has been appointed and is serving as administratrix of the Estate of Hiriam "Hank" Williams and denies all other allegations of this paragraph.
4. She denies the allegations of this paragraph as they are stated and for further answer thereto states that she believes Randall Hank Williams is the sole heir of his father, Hiriam "Hank" Williams, and entitled to all the proceeds of this estate; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate, which rights should be judicially determined before the estate can be closed and its assets distributed. For the purpose of determining such rights, a guardian ad litem should be appointed to represent the interest of any and all unknown minors who may have or claim any interest in said estate.

5. She denies the allegations of paragraph 5.

6. She admits that certain revisions in the copyright laws of the United States are being considered by Congress which may affect or create additional renewal rights or vest in the administrator other rights and that for this reason the administration should remain open until these revisions are enacted. This problem will not affect the distribution of assets after the beneficiaries are determined by the Court.

7. For further answer to that aspect of the Complaint seeking to have the assets of the estate paid to Petitioner as Tennessee guardian for the minor, she says that she is the guardian of said minor under appointment of this Court and is presently administering substantial funds of the minor which were previously distributed from the estate to the guardianship; as such she is under bond set and approved by this Court and makes an annual accounting to this Court. If the estate should be closed, any funds of the estate should be turned over to the Alabama guardian in order that the actions of such guardian may be supervised by this Court and not removed from the state and delivered over to the Tennessee guardian.

The Petitioner as Tennessee guardian has filed no accounting with the Chancery Court at Nashville until required by that Court to do so. She has now filed an accounting for 1964, 1965 and 1966 which shows that she has received as such guardian \$441,236.12 and spent \$447,366.01 and, therefore, is short in her accounting by some \$6,129.89. Her accounting has not been heard or approved by the Court. The information presently available on the actions of Petitioner as Tennessee guardian



indicate she is unfit to administer the funds which she has received and is not a fit and suitable person to administer the funds of the Williams Estate which she now asks this Court to turn over to her.

The necessity for closing this estate and the question of paying the assets over to Petitioner as Tennessee guardian were before this Court in 1963, when Petitioner filed a similar bill making substantially the same allegations. On her failure to answer interrogatories propounded to her for more than a year after this Court required answers to be made, the Court dismissed her petition. Under the provisions of Equity Rule 75 this order was a dismissal on the merits; therefore, the only question properly before the Court is to determine the beneficiaries and their interests in said estate. When this is done, the assets of the estate can then be paid over to the Alabama guardian. The Petitioner has filed with Court a petition to close the Alabama guardianship and to pay over its assets to her as Tennessee guardian. This petition is pending and will be determined by the Court in due time. The Petitioner, through her attorneys, has indicated that she will request an early hearing on the issues presented in the estate pleadings, and when they are determined, she will then proceed with the issues presented in the guardianship pleadings.

JONES, MURRAY, STEWART & VARNER

/s/ Robert B. Stewart

Attorneys for Irene W. Smith

H-4.4

I hereby certify that I have served copies of the foregoing Answer on W. D. Partlow, Jr. and J. M. Williamson, Attorneys for Audrey Mae Williams, on Richard H. Frank, Jr. and Maury D. Smith, Attorneys for Fred Rose Music, Inc., and on J. M. Weinstein, Attorney for Metro-Goldwyn-Mayer, Inc., by mailing the same, postage prepaid, to them at their respective offices on this the 14 day of April, 1967.

/s/ Robert B. Stewart  
Of Counsel for Irene W. Smith

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APPENDIX H-5

IN THE MATTER OF	) IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	) OF MONTGOMERY
"HANK" WILLIAMS,	) COUNTY, ALABAMA, IN
Deceased	) EQUITY NO. 25056

ANSWER OF GUARDIAN AD LITEM

Comes now, Drayton N. Hamilton, guardian ad litem for any person or persons having an interest in or claim to any property or assets which are a part of the Estate of Hiriam "Hank" Williams, deceased, and being administered by or subject to the control of this Court, who may be minors under the age of twenty-one years and who are not parties hereto or represented by counsel, and has heretofore accepted the appointment as guardian ad litem in this cause and now for answer says:

1. That the guardian ad litem avers and shows unto this Honorable Court that he has made a diligent search for any heretofore unknown persons who are entitled to share in the estate of the decedent, Hiriam "Hank" Williams, and has made inquiries of numerous persons, relatives, and otherwise, in the State of Alabama and outside the State of Alabama, and that the only person this guardian ad litem has been able to locate and determine as such "unknown" person who is entitled to share in the Estate of Hiriam "Hank" Williams is that person hereinafter referred to in Paragraph 11 of this answer.

2. The guardian ad litem neither admits nor denies the allegations of Paragraph 1 of the petition.

3. The guardian ad litem neither admits nor denies the allegations of Paragraph 2 of the petition.

4. The guardian ad litem denies each and every allegation of Paragraph 3 of the petition.

5. The guardian ad litem denies each and every allegation of Paragraph 4 of the petition.

6. The guardian ad litem neither admits nor denies the allegations of Paragraph 5 of the petition.

7. The guardian ad litem neither admits nor denies the allegations of Paragraph 6 of the petition.

8. The guardian ad litem neither admits nor denies the allegations of Paragraph 7 of the petition.

9. The guardian ad litem neither admits nor denies the allegations of Paragraph 8 of the petition except any allegation in said Paragraph 8 which infers that Randall Hank Williams is the only person entitled to share in the estate of the decedent, Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

10. For further answer to the petition, as amended, the guardian ad litem says and affirmatively alleges that there is in the file of this cause document carrying file No. 204, an agreement between decedent, Hiriam "Hank" Williams, and Bobbie W. Jett; that said document was filed for record in the Probate Court of Montgomery County, Alabama, under order of that court dated August 18, 1967; and your guardian ad litem affirmatively alleges that there was a girl child born to the said Bobbie W. Jett (named in said document and the signatory thereof) on or about, to-wit, January 6, 1953, in St. Margaret's Hospital, Montgomery, Alabama; that said child is living and is the

daughter of the decedent, Hiriam "Hank" Williams, and as such entitled to share equally in the estate with any other child or children of said decedent.

11. That the guardian ad litem further affirmatively alleges that the filing requirements of the statutes of the State of Alabama, with respect to legitimation of children, have been complied with and alleges that the said child born to the said Bobbie W. Jett is the legitimate heir of the decedent, Hiriam "Hank" Williams; and in support of such allegation your guardian ad litem attaches hereto and makes a part hereof, as if fully set out herein at this place, a certified copy of the order of the Probate Court dated August 18, 1967, made on proceedings had in said Court, which proceedings are now on file in this Court; and the guardian ad litem avers that said child is entitled to share in the estate of the decedent, Hiriam "Hank" Williams.

12. That your guardian ad litem affirmatively alleges, additionally, in the event this Honorable Court determines that there has been a failure or defect in the compliance with the statutes of the State of Alabama with respect to the legitimation of said child of the decedent, that said child of the decedent is the illegitimate daughter of the decedent and as such is entitled to share in the estate with any other child of the said decedent.

13. That your guardian ad litem further affirmatively alleges that said child of Bobbie W. Jett and the decedent is the illegitimate daughter of the decedent and as such is entitled to share equally with any other child or children in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable

or payable in the future to the estate by virtue of any copyrights, or the renewals thereof, owned by or the property of the estate in any tunes, songs, music, compositions, or other materials belonging to the estate, or heretofore assigned by the estate, or hereafter assigned or transferred by the estate, and avers in support of this allegation that the United States Copyright Laws control the distribution of any such funds from said royalties on said enumerated materials and avers that rights under such laws present a federal question and that this Honorable Court is bound and must give effect to said statutes and the decisions of the federal courts thereunder; that the proof in this case will affirmatively show that the estate does enjoy revenues from such sources enumerated which will be or should be accounted for in this proceeding and cause.

WHEREFORE, THESE PREMISES CONSIDERED, the guardian ad litem respectfully prays:

I. That upon hearing hereof the Court will render appropriate decree or decrees, orders or judgments;

(A.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiram "Hank" Williams, and was recognized as such by him, and duly and legally legitimated according to the statutes and laws of the State of Alabama, and is entitled to share in the estate of the decedent.

(B.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiram "Hank" Williams, and as such is entitled to share equally

in the estate with any other child or children of the said decedent.

(C.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in the estate of the decedent, and in particular, any part of the estate attributable to or resulting from royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the estate by virtue of any copyrights, or the renewals thereof, owned by or the property of the estate in any tunes, songs, music, compositions or other materials belonging to the estate, or heretofore assigned by the estate or hereafter assigned or transferred by the estate.

(D.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States, by virtue of any copyrights, or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(E.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiram "Hank" Williams, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiram "Hank" Williams, under the Copyright Laws of the United States, by virtue of any copyrights or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiram "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(F.) And your guardian ad litem further prays for such other, further, different or general relief to which the above referred to girl child may be entitled in the premises and to which the Court may seem mete and just and your guardian ad litem will ever pray, etc.

This the 12th day of September, 1967.

/s/ Drayton N. Hamilton,  
Drayton N. Hamilton, as guardian ad litem for any person or persons having an interest in or claim to any property or assets which are a part of the Estate of Hiram "Hank" Williams, deceased, and being administered by or subject to the control of this Court, who may be minors under the age of twenty-one years and who are not parties hereto or represented by counsel.



I hereby certify that I have, today, this the 12th day of September, 1967, mailed a copy of the foregoing answer by U.S. Mail, first class, prepaid, to the following attorneys of record:

1. Joseph M. Williamson, Esq., P.O. Box Drawer 64, Urbana, Illinois
2. Messrs. Jones, Murray, Stewart & Varner, First National Bank Bldg., Montgomery, Ala.
3. Messrs. Orenstein, Arrow and Lourie, 119 West 57th Street, New York, N.Y. 10019
4. Messrs. Bardsdale, Whalley, Leaver, Gilbert & Frank, Nashville Bank & Trust Bldg. Nashville, Tennessee
5. Messrs. Goodwyn, Smith and Bowman 325 Bell Building, Montgomery, Ala. 36104
6. William D. Partlow, Jr., Esquire 602 25th Avenue, Tuscaloosa, Ala.

/s/ Drayton N. Hamilton,  
Drayton N. Hamilton,  
guardian ad  
litem

APPENDIX H-6

IN THE MATTER OF	) IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	) OF MONTGOMERY
"HANK" WILLIAMS,	) COUNTY, ALABAMA, IN
	) EQUITY. Case
	) No. 25056

ORDER

This matter now coming on for hearing is submitted on the amended petition filed by Audrey M. Williams and Randall Williams, the Answer of Irene W. Smith, as Administratrix of the Estate of Hiriam Hank Williams, to the Petition as last amended, the Acceptance of his appointment and the Answer of the Guardian ad Litem to the Petition as last amended, the testimony as noted by the Register and stipulations entered into by the parties through their attorneys of record.

Counsel for the Williams Estate has advised the Court that he does not insist upon his motion to require security for costs and said motion should, therefore, be overruled.

The Court has carefully considered the testimony and the evidence presented by the parties in this case and helpful briefs filed by their attorneys.

The principal issue raised by the Petition as last amended and by the Answer of the Administratrix is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been legitimated under Alabama's statutory procedure. The Guardian ad Litem has

also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams, and as such may have certain rights under the Federal Copyright Statutes. The Court does not believe it is necessary to make this latter determination.

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams.

The Petitioners and the Administratrix recognize in their pleadings that this estate should remain open because there are or may be unliquidated accounts due the estate, and pending amendments to the Federal Copyright laws make further administration advisable. This Court is, therefore, of the opinion that the Administration of this estate should continue, as it has in the past, under the supervision of this Court.

All issues presented by the pleadings in this case and not specifically decided should, therefore, be reserved.

The Court has considered the time spent and the expenses incurred by the Guardian ad Litem and is of the opinion that he is entitled to a reasonable fee and to be reimbursed for his actual expenses, and that said fee and expenses should be paid by the Estate.

IT IS, THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:

1. That the motion of Irene W. Smith as Administratrix to require the Petitioner to furnish security for costs is hereby overruled.

2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

3. That the fee of the Guardian ad Litem, Drayton N. Hamilton, is fixed at Two Thousand Dollars (\$2,000.00), which includes his expenses through the date of trial.

4. All other matters are reserved.

5. The costs of these proceedings, including the fee and expenses of the Guardian ad Litem, are taxed against the Estate of Hiriam Hank Williams, for which execution may issue.

Done this 1 day of Dec, 1967.

/s/ Richard P. Emmet  
Circuit Judge

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H-7.1

**APPENDIX H-7**

PIERRE PELHAM  
LAWYER  
919 DAUPHIN STREET  
MOBILE, ALABAMA

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TELEPHONE 438-9784

May 15, 1968

P.O. BOX 291  
MOBILE, ALABAMA 36601

Drayton N. Hamilton, Esquire  
Hinson & Hamilton  
26 South Perry Street  
Montgomery, Alabama 36104

Dear Drayton:

I have discussed your letter of May 8, 1968 with Mr. and Mrs. Wayne Deupree; and it is their feeling, first, that the possibility of their daughter realizing anything from an appeal of those cases in which you represent her as guardian ad litem is remote and, second, that in any event the embarrassing publicity which would result from an appeal would be far more damaging than any benefit that could result therefrom. As the attorney for Mr. and Mrs. Deupree, I concur in their conclusions, and we, therefore, request that you not appeal the cases discussed in your letter of May 8, 1968.

With kindest personal regards, I am

Sincerely,

/s/ Pierre  
Pierre Pelham

PP/jas

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H-7.2

PIERRE PELHAM  
LAWYER  
919 DAUPHIN STREET  
MOBILE, ALABAMA

---

TELEPHONE 438-9784  
May 27, 1968

P.O. BOX 291  
MOBILE, ALABAMA 36601

Judge Richard P. Emmet  
Montgomery County Circuit Court  
Montgomery, Alabama

Re: Cathy Louise Deupree, minor

Dear Judge Emmet:

In reply to Mr. Hamilton's letter of May 20, 1968, it is the position of Mr. and Mrs. Wayne Deupree, first, that the possibility of their daughter realizing anything from an appeal is remote and, second, that in any event the publicity which would result therefrom would be far more damaging than any benefit she might derive. Mr. and Mrs. Deupree are, therefore, opposed to Mr. Hamilton's taking an appeal in this matter.

With kindest personal regards, I am

Sincerely,

/s/ Pierre Pelham  
Pierre Pelham

PP/jas

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APPENDIX H-8

IN THE MATTER OF	) IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	) OF MONTGOMERY
HANK WILLIAMS,	) COUNTY, ALABAMA, IN
	) EQUITY CASE
	) #25056

PETITION SEEKING CLARIFICATION OF STATUS  
AND INSTRUCTIONS

Comes now, D. N. Hamilton, who served as guardian ad litem, and appeared in the above styled cause as such in the litigation in September, 1967, in this cause, and represents and shows unto Your Honor as follows:

1. That this Honorable Court entered a decree in this cause on December 1, 1967, and that under the rules an appeal must be filed within six (6) months from said date.

2. That in the judgment and opinion of your petitioner an appeal should be filed in this cause for the following reasons:

(a) The share of the ward, if supportable, is and would be extremely valuable from a pecuniary viewpoint.

(b) In view of the value of a present share in the estate and the potential earnings of assets of the estate, every means should be exhausted to legally establish the interest of the ward.

(c) That there is a probability of a change in the substantive law of this state with respect to illegitimates, which would be of inestimable value to the ward, when

the United States Supreme Court decides the case reported as *Levy, etc. v. State of Louisiana through the Charity Hospital of Louisiana at New Orleans, Board of Administrators, et al*, 192 So.2d 193, 193 So.2d 530, appealed and argued in the U.S. Supreme Court during the October Term, 1967, being Case No. 508, and predictably to be decided prior to the summer adjournment of the said Supreme Court.

(d) The probability of an early change in the copyright laws of the United States which would be of value and benefit to the ward at some reasonably foreseeable date in the future and, therefore, the rights of the ward should be kept alive. (The U.S. House of Representatives has already passed a bill containing the following definition: "A person's 'children' are his immediate offspring, whether legitimate or not, and any children legally adopted by him," and the Senate has a bill (with the same definition) under consideration).

3. Your petitioner respectfully suggests to Your Honor that the Alabama Supreme Court should, on appeal review the conclusions reached by Your Honor with reference to the applicability of Title 27, Section 11, to the facts adduced during the trial; that the said Court should be requested to make a finding as to the relationship of the ward to the decedent; that the said Court should evaluate the decision of the *Levy* case, when issued, with reference to the facts of this cause as to the rights of the ward.

4. Your petitioner, in all candor, advises Your Honor that the parents of the ward, through counsel, have requested that no appeal be filed or pursued in this cause.



5. Your petitioner further respectfully suggests that should an appeal be decided upon as desirable or necessary and if pursued either by your petitioner or by other counsel appointed by this Honorable Court that this Court direct and order the court reporter, Register, solicitors of record on appeal, to agree upon an abridgement of the record and transcript so as to insure and secure the privacy of the ward.

6. Your petitioner further advises this Honorable Court that the Register has suggested that a cash deposit in a minimum amount of \$500.00 be made as a condition precedent to the preparation of the transcript in this cause.

THESE PREMISES CONSIDERED, your petitioner prays that Your Honor will clarify the status of, advise with, and give instructions to your petitioner in and on the following, to-wit:

1. The status and obligation of your petitioner to the ward in this cause at the present time.

2. The judgment and advice of this Court as to the necessity of pursuing an appeal in this cause.

3. The measures that should be taken to abridge the record so as to insure and secure the privacy of the ward. (The objections of the parents could likely be met if they were reassured on this phase of an appeal).

4. The measures that could be taken to reduce the cost of preparation of the transcript and the bond.

5. The reimbursement of counsel for expenses and the possibility of payment for services rendered on appeal and the source of such funds.

6. The obligations, if any, of your petitioner to advise with the solicitor for the estate with reference to the appeal and the obligations, if any, of your petitioner to advise with other solicitors connected with the initial litigation.

YOUR PETITIONER RESPECTFULLY PRAYS for any other advice and instructions Your Honor deems mete and proper in this cause.

Respectfully submitted,

/s/ D. N. Hamilton  
D. N. Hamilton

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APPENDIX H-9

IN THE MATTER OF	)	IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	)	OF MONTGOMERY
HANK WILLIAMS	)	COUNTY, ALABAMA, IN
	)	EQUITY CASE
	)	NO. 25056

ORDER

This matter now coming on for decision on "Petition seeking Clarification of Status and Instructions" filed by D. N. Hamilton, who served as guardian ad litem and appeared in the above styled cause in the hearing in September, 1967, which resulted in the Order of this Court dated December 1, 1967, and the Court understanding the allegations and prayer of the said petition and having considered same is of the opinion that no appeal should be filed by the petitioner; it is, therefore,

CONSIDERED, ORDERED and DECREED by the Court:

1. That no appeal be filed by the petitioner, D.N. Hamilton, Esquire, in this cause.

DONE, this the 28th day of May, 1968.

/s/ Richard P. Emmet  
Judge

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## APPENDIX H-10

IN THE MATTER OF	)	IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	)	OF MONTGOMERY
"HANK" WILLIAMS,	)	COUNTY, ALABAMA, IN
DECEASED.	)	EQUITY CASE
	)	NO. 25056
	)	

## REQUEST FOR INSTRUCTIONS

Now comes Robert B. Stewart as Administrator of the Estate of Hiriam "Hank" Williams, and for answer to the Petition of Randall Williams seeking a distribution of the cash assets of said estate, admits the allegations of the Petition.

For further answer the Administrator says that there are certain contingencies of which the Court is aware which could result in claims against the Estate, which could not be paid if this distribution is made. It is in the best interest of the Estate and is necessary for the protection of the Administrator that all of the facts relating to such contingency be fully made known to the Court before any order is issued authorizing further distribution of assets from this Estate. The Administrator is of the opinion that, before the requested distribution is made, Gulf American Fire & Casualty Company as surety on the Administrator's bond should be furnished with a copy of the Petition and of this Answer and should be represented by its attorneys upon the hearing of this Petition.

— /s/ RBS

Robert B. Stewart, as Administrator of the Estate of Hiriam "Hank" Williams

H-10.2

Of Counsel:

JONES, MURRAY, STEWART & YARBROUGH  
UNION BANK BUILDING  
MONTGOMERY, ALABAMA 36104

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## APPENDIX H-11

IN THE MATTER OF	)	IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	)	OF MONTGOMERY
"HANK" WILLIAMS,	)	COUNTY, ALABAMA, IN
DECEASED.	)	EQUITY. CASE
	)	NO. 25056
	)	

## ORDER

Robert B. Stewart as Administrator of the Estate of Hiriam "Hank" Williams, has petitioned the Court for instructions relating to distribution of assets, and Randall Williams has petitioned the Court for distribution of the available cash assets in his father's estate. At the request of the Administrator, Gulf American Fire & Casualty Company, as surety on the Administrator's bond, has been given notice of both petitions and through its attorney, James W. Garrett, has accepted service of said petitions. The Court has considered both petitions and has conferred with the Administrator and with the attorney for the surety on his bond. This Court is well aware of the contingencies referred to in the Administrator's petition asking for instructions. This matter was previously presented to the Court at an earlier hearing and the rights of any parties, other than Randall Williams, had been ruled on in earlier orders of this Court. Since the Court's last ruling, the Supreme Court of the United States in considering a similar problem again reaffirmed the earlier opinion of this Court and the long-standing case law of the State of Alabama. (*Labine v. Vincent*, 401 U.S. 532, 28 L.Ed. 2d 288, Rehearing denied, 402 U.S. 990, 29 L.Ed 2d 156). It

H-11.2

is the considered opinion of the Court that Randall Williams is the sole heir of his father, Hiram "Hank" Williams, and that the distribution which he requested may be made by the administrator.

DONE this 22 day of Dec., 1972.

/s/ Richard P. Emmet  
Circuit Judge

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APPENDIX H-12

IN THE MATTER OF	)	IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM	)	OF MONTGOMERY
"HANK" WILLIAMS,	)	COUNTY, ALABAMA, IN
Deceased	)	EQUITY.
	)	NO. 25056

ORDER

The request of Robert B. Stewart, as Administrator of the Estate of Hiriam "Hank" Williams for instructions, having been considered by the Court, and the Court being of the opinion that the request of the Administrator, as set out in the petition, is in the best interest of the estate and of the beneficiary, Randall Hank Williams;

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that Robert B. Stewart, as Administrator de bonis non of the Estate of Hiriam "Hank" Williams, be and he is hereby authorized to distribute and assign to Randall Hank Williams all rights to receive royalties, due or to become due after December 31, 1974, under the terms and conditions of any contract between Acuff-Rose Publications, Inc., its successors and assigns, and Hiriam "Hank" Williams, and between Acuff-Rose Publications, Inc., Milene Music, Inc. and Fred Rose Music, Inc., their successors and assigns, and the Estate of Hiriam "Hank" Williams.

DONE this 7 day of February, 1975.

/s/ Richard P. Emmet  
Circuit Judge

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APPENDIX H-13

STATE OF ALABAMA                     )  
MONTGOMERY COUNTY                 )  
   )

ASSIGNMENT

The undersigned, Robert B. Stewart, as Administrator de bonis non of the Estate of Hiram "Hank" Williams, deceased, does hereby assign and transfer to Randall Hank Williams all royalties due or to become due after December 31, 1974, under the terms and conditions of any contract between Acuff-Rose Publications, Inc., its successors and assigns, and Hiram "Hank" Williams, and any contracts between Acuff-Rose Publications, Inc., Milene Music, Inc., and Fred Rose Music, Inc., their successors and assigns and the Estate of Hiram "Hank" Williams.

All royalties due under the contracts hereinabove described shall be paid to Randall Hank Williams and mailed to him in care of First State Bank of Cullman, Cullman, Alabama, 35055.

This assignment is executed in compliance with an Order of the Circuit Court of Montgomery County, Alabama, made and entered on the 7th day of February, 1975, authorizing the Administrator to distribute to Randall Hank Williams the above referred to contracts and rights accruing thereunder. A certified copy of said Order is attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 18 day of February, 1975.

H-13.2

/s/ Robert B. Stewart (L.S.)  
Robert B. Stewart,  
Administrator de  
bonis non of the  
Estate of Hiriam  
"Hank" Williams

STATE OF ALABAMA                    )  
  )  
MONTGOMERY COUNTY                )

I, Alice H. Ward, a Notary Public in and for said County in said State do hereby certify that Robert B. Stewart, whose name as Administrator de bonis non of the Estate of Hiriam "Hank" Williams, deceased, is signed to the foregoing Assignment, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he in his capacity as such Administrator and with full authority executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this the 18 day of February, 1975.

(NOTARIAL SEAL)

/s/ Alice H. Ward  
Notary Public, Montgomery  
County, Alabama.

My Commission Expires:

February 19, 1978

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APPENDIX H-14

	)	IN THE
IN THE MATTER OF THE	)	CIRCUIT COURT
ESTATE OF HIRIAM "HANK"	)	MONTGOMERY
WILLIAMS, Deceased	)	COUNTY,
	)	ALABAMA IN
	)	EQUITY.
	)	NO. 25056

DECREE APPROVING FINAL SETTLEMENT

This matter coming on to be heard, comes before the Court on the Petition of the Administrator for final settlement and discharge of the Administrator and the surety on his bond, and upon the acceptance, waiver and receipt of Randall Hank Williams, the sole beneficiary of this estate.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court:

1. That Robert B. Stewart as Administrator de bonis non and Gulf American Fire and Casualty Insurance Company, as surety his bond, be and they are hereby discharged.

2. That all costs of this proceeding be taxed by the Register and paid by the Administrator, for which execution may issue.

DONE this 14 day of July, 1975.

/s/ Richard P. Emmet  
Circuit Judge

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## APPENDIX I-1

IN THE MATTER OF RANDALL	)	IN THE
HANK WILLIAMS, A MINOR	)	CIRCUIT COURT
	)	OF
	)	MONTGOMERY
	)	COUNTY,
	)	ALABAMA
	)	IN EQUITY
	)	NO. 27960

## ORDER

This matter was submitted upon the petition of Irene Smith seeking instructions from the Court with regard to a proposed contract between Irene Smith as Guardian for Randall Hank Williams, and Fred Rose Music, Inc.; the appointment of Fontaine M. Howard as Guardian Ad Litem for the minor, Randall Hank Williams, and his acceptance and denial of the allegations of the petition; the proposed contract between Fred Rose Music, Inc. and Irene Smith as guardian for Randall Hank Williams; the testimony of Frank Walker, Harold Orenstein and Harry Fox taken pursuant to order of the Court; and argument of counsel for petitioner and the guardian ad litem.

The Court is of the opinion and finds that Irene Smith is the duly appointed and acting guardian of the Estate of Randall Hank Williams, a minor; that said minor has certain contingent future interests in the United States renewal term of copyright in and to all of those musical compositions written or composed by his father, Hiram "Hank" Williams; that Fred Rose Music, Inc. and its associated companies, Milene Music, Inc. and Acuff-Rose Publications, Inc. own the copyrights to all of the music written or composed by the late Hiram "Hank" Williams,

and have successfully exploited said copyrights during his lifetime and since his death; that it is in the best interest of the minor, Randall Hank Williams, to permit the present owners of the copyrights to renew them as the term of each expires and to contract therefor through his guardian at this time.

The Court is of the opinion and finds that the offer of Fred Rose Music, Inc. as contained in the contract now before the Court as petitioner's Exhibit "A" is reasonable and that it is in the best interest of the minor that said contract be executed at this time by his guardian.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that Irene Smith be and she is hereby authorized to execute a contract with Fred Rose Music, Inc. on behalf of the minor, Randall Hank Williams, for the sale of the minor's contingent future interests in the United States renewal term of copyrights in and to all of the musical compositions written or composed by Hiram "Hank" Williams according to the terms and conditions of the contract heretofore exhibited to the Court in support of the petition for instructions.

DONE this 19th day of March, 1963.

/s/ Charles Ball  
Circuit Judge

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APPENDIX I-2

IN THE MATTER	:	IN THE
OF THE	:	CIRCUIT COURT
GUARDIANSHIP	:	OF
ESTATE OF	:	MONTGOMERY
RANDALL	:	COUNTY, ALABAMA,
HANK WILLIAMS,	:	IN EQUITY
A MINOR	:	Case No. 27960

PETITION TO VACATE DECREE OF MARCH 19, 1963  
AND FOR ORDER REQUIRING  
GUARDIAN TO MAKE ACCOUNTING  
AND TRANSFER ASSETS

Come your petitioners, Audrey Mae Williams, as the Mother, Custodian and Guardian of Randall Hank Williams, a minor over the age of fourteen years, and also the said Randall Hank Williams, a minor individually and by and through Audrey Mae Williams, as his Mother, Custodian and Guardian, and respectfully represent and show unto the Court as follows:

1. That your petitioner Audrey Mae Williams is over the age of twenty-one years and resides in Nashville, Tennessee; that she is the mother of the minor petitioner, Randall Hank Williams, who is over the age of fourteen years; that she now has, and has had since her divorce from Hiram (Hank) Williams, the father of said minor petitioner, which decree of divorce was rendered on July 10, 1952, the legal custody of said minor, Randall Hank Williams; that she and the said Randall Hank Williams both now reside, as aforesaid, in Nashville, Davidson County, Tennessee.

2. That petitioner Randall Hank Williams became fourteen years of age on May 26, 1963; that, upon his

arrival at the age of fourteen years, he exercised his right and privilege, pursuant to the statutes and laws of the State of Alabama, to designate and nominate his mother, the said Audrey Mae Williams, as Guardian of his estate; that your petitioner Audrey Mae Williams has been heretofore appointed, and has qualified, and is now acting as Guardian of the person and estate of the said Randall Hank Williams by decree of the Chancery Court, Davidson County, Tennessee, in that certain cause entitled "Audrey Mae Williams vs Randall Hank Williams," Rule No. 84463, decree entered in Minute Book 189, at Page 324; that she has executed and filed in said cause, pursuant to the instructions of the said Court, a good and sufficient bond with The Travelers Indemnity Company as surety, in the penal sum of Six Hundred Thousand (\$600,000) Dollars, which is in effect at this time and is in excess of the value of the assets constituting the Guardianship Estate of said minor according to the last report filed by the respondent Irene W. Smith as his Guardian by appointment of the Probate Court of Montgomery County, Alabama, the removal of the assets of which said Guardianship Estate to the State of Tennessee is herein sought.

3. That the respondent Irene W. Smith has been heretofore appointed and has been serving in Texas, but subject to the jurisdiction of the Alabama courts, as Guardian of Randall Hank Williams; that she is a resident of the State of Texas, where she has resided for many years; that she has seen said minor only briefly on one occasion, and had no personal contact with him during the past twelve or thirteen years; that she has shown no personal interest in him; that she draws and has received annually large fees for serving as such Guardian; that she

has employed counsel to represent her as such Guardian, who has also received substantial fees; that the expense incident to the administration of said Guardianship Estate will be substantially reduced by the removal of same to the place of residence of petitioners, inasmuch as petitioner Audrey Mae Williams, who, as heretofore averred, has been appointed as Guardian of Randall Hank Williams by decree of the Chancery Court of Davidson County, Tennessee, has agreed to serve as such Guardian for her son without any compensation whatsoever; that on May 26, 1967, the minor will become eligible for emancipation at the discretion of the judiciary under relevant statutes of the State of Tennessee, where he resides, and plans to make application for such emancipation; that his mother, Audrey Mae Williams, as such Tennessee Guardian, further agreed that no part of the corpus or income of the Guardianship shall be used for the care or support of the minor without Court approval and, further, that the funds and assets, corpus and income of said Guardianship Estate will be invested and maintained in investments prescribed by law and approved by the Court, all of which terms of said agreement are approved by the Court and incorporated in the decree of the Chancery Court of Davidson County, Tennessee rendered on June 11, 1963.

4. That among the assets which the minor, RANDALL HANK WILLIAMS, did become entitled to receive as the sole distributee of the estate of his father were several rights of renewal of certain copyrighted songs authored or composed by the minor's father prior to the death of the father, and numerous unpublished lyrics composed by Hiram (Hank) Williams during his lifetime



but not published at the time of his death. Such copyrighted material, and unpublished lyrics are more particularly described in the files and records of this cause in a certain Petition for Instructions filed herein on January 15, 1963, as a paper number 35 and the exhibits attached thereto.

5. On January 15, 1963, without prior notice to or consultation with either the ward or his mother, the Guardian did cause to be filed herein for the consideration of this Court a Petition for Instructions, as aforesaid, asking that authority be given the Guardian to enter into a contract granting unto Fred Rose Music, Inc., a Tennessee corporation, the exclusive right to renew the copyrights on the material composed by Hiram [sic] (Hank) Williams, deceased, and copyrighted during his lifetime; and, further, all rights of every type and character in the lyrics composed by said decedent but not copyrighted at the time of his death, all in accordance with the terms and conditions set forth in the Petition and the attachments thereto now remaining in the files and records of this cause.

6. Thereafter, on March 19, 1963, still without actual notice given to the ward or to his mother, the Guardian, Irene W. Smith, did cause said Petition to be set down for hearing in this cause, introduced certain testimony in support of the prayer of said Petition and thereby induced the then presiding Judge of this Court to enter a certain Decree granting the prayer of the Petition and directing the Guardian to enter into a contract in the manner and form proffered [sic] by Fred Rose Music, Inc., the said Decree having been predicated upon the evidence offered by the Guardian and Fred Rose Music,

Inc., and the recommendations made to the Court by the Guardian and the said Fred Rose Music, Inc.

7. That as a result of the Decree aforesaid, the Guardian did enter into a certain contract granting unto Fred Rose Music, Inc., the aforesaid rights of renewal and all rights in the unpublished lyrics for a total consideration paid to the Estate of the minor ward, Randall Hank Williams, of Twenty five thousand (\$25,000.00) dollars, all of which was done without the prior knowledge, consent, notice to or acquiescence [sic] of either the ward or his mother, Audrey Mae Williams, although both the Guardian and Fred Rose Music, Inc., did then know, or should have known, that both the ward and his mother were active in the field of country and western music and thereby were peculiarly possessed of knowledge as to the real worth of the renewal catalogue and the desirability of contracting with Fred Rose Music, Inc.

8. The consideration paid, as aforesaid, for the property interests obtained by Fred Rose Music, Inc., was, to the full knowledge and awareness of Fred Rose Music, Inc., grossly inadequate, the rights of renewal aforesaid, without reference to the great but difficult to ascertain value of the unpublished lyrics, being worth the minimum sum of Five hundred thousand (\$500,000.00) dollars. Such disparity between the true, current fair market value of such rights, as of the date of such contract, and the price for which the Guardian did agree to sell the same, to-wit: Twenty five thousand (\$25,000.00) dollars, being so great as to render such transaction presumptively fraudulent.

9. Concurrent with the filing of the aforesaid Petition, and without the knowledge or consent of the minor ward or his mother, the said Irene W. Smith, then acting as Guardian of said minor, did enter into an agreement or undertaking with Fred Rose Music, Inc., providing, to the best of Petitioners' information and belief, that Fred Rose Music, Inc., would pay to the said Guardian, personally, the sum of five thousand (\$5000.00) dollars upon the entry of the requested Decree by this Court, such sum being thereafter paid by check No. 168, drawn on the account of Fred Rose Music, Inc., in the First American National Bank, Nashville, Tennessee, and deposited in the account of Irene W. Smith, Real Estate, in the Wynnwood State Bank, Dallas, Texas.

Petitioners' are informed and believe that the payment of such sum of money was contingent upon the said Irene W. Smith, as Guardian, obtaining approval of the proposed sale of the wards interests, as above set forth; but, whether the payment was for such purpose or for the acquisition of some contingent interest held or claimed by the said Irene W. Smith as an individual, the agreement to make such payment created such a conflict of interest between the said Irene W. Smith, her agent, attorney or representative, and the ward, as to compel all such persons to disqualify themselves to act for the ward in the then pending proceedings, all to the knowledge and with the participation of Fred Rose Music, Inc., and the failure of Irene W. Smith and her agents or representatives to so disqualify themselves rendered all proceedings relating to such transaction thereafter held in this cause a nullity.

10. Although certain purported [sic] unbiased, expert testimony was taken in support of the Petition filed,

those persons offered as expert, unbiased and disinterested witnesses were, either in whole or in part, agents, employees, representatives, or close business associates of Fred Rose Music, Inc., all of which should have been but was not disclosed to the Court; no adequate cross examination of such persons was undertaken to disclose such bias or possible bias, and the effect of failing to make known to the court such bias or possible bias was to work, although petitioners neither know nor allege it was so intended, a fraud upon the court such as to make the entry of the Decree a voidable act, and one which should, in equity, be avoided.

11. That in order that a full and complete adjudication of the rights of all of the parties, including those of the ward and of Fred Rose Music, Inc., may be obtained herein, a rule should be entered in this cause compelling and directing that Irene W. Smith, Guardian in this cause, and the said Fred Rose Music, Inc., appear at a date soon to occur, all as by the rules of this court provided, to show cause, if any they or either of them have, why the Decree of this Court, entered on March 19, 1963, as paper number 43, should not be vacated and held for naught.

WHEREFORE, THE PREMISES CONSIDERED, the petitioners, AUDREY MAE WILLIAMS, Guardian of the person and estate of RANDALL HANK WILLIAMS, and RANDALL HANK WILLIAMS, a minor in his own right, do pray that Fred Rose Music, Inc., and Irene W. Smith individually and as Guardian of Randall Hank Williams, a minor, [sic] made a party to this cause by proper process and that an order be entered herein directing that this petition be set down for hearing at a date soon to occur; that notice of such hearing be directed to be given,

in such manner and under such circumstances as this Court may deem appropriate, to Irene W. Smith, as Alabama Guardian of the Estate of Randall Hank Williams, a minor, and to Fred Rose Music, Inc., and that such persons, and all others having any interest in the subject matter of the Decree of this Court entered on March 19, 1963, as paper number 43, be directed to appear at such time as this Court may deem proper, then and there to show cause, if any they have, why such Decree, aforesaid, should not be vacated; and,

WHEREFORE, THE PREMISES CONSIDERED, petitioners file this application pursuant to the provisions of Title 21, Section 109, of the Code of Alabama of 1940, as amended, and pray that a date may be set for the hearing hereof and that notice of the filing of said petition, together with a copy of same, and a copy of the order setting the date for the hearing of same, be given to Irene W. Smith, as Guardian of Randall Hank Williams, a minor, or her attorney, Robert B. Steward, Esq.; and, petitioners further pray that, upon the hearing of said petition, this Court will order and direct the removal of the property and estate of the minor, Randall Hank Williams, to the State of residence of said ward and of the said Audrey Mae Williams, the Mother, Custodian and Guardian of the person and estate of said ward; that the said Irene W. Smith, as Guardian of Randall Hank Williams, a Minor, by appointment of the Probate Court of Montgomery County, Alabama, shall forthwith make out and file a full and complete statement and accounting of her actions and transactions as Guardian of the said Randall Hank Williams, a minor; and, that she shall forthwith transfer, pay over and deliver to the said Audrey

Mae Williams, as Guardian of the person and estate of Randall Hank Williams, a minor, by appointment of the Chancery Court of Davidson County, Tennessee, all of the cash, investments, assets and properties of all kinds which she holds or has in her possession as such Guardian of the Estate of the said Randall Hank Williams, a minor; and, petitioners further pray that this Court will grant such other, further and different relief as in equity and good conscience petitioners may be entitled, as they will ever pray, etc.

/s/ Audrey Williams  
As Mother, Custodian and  
Guardian of Randall  
Hank Williams, a Minor

/s/ Randall Hank Williams, Jr.  
RANDALL HANK  
WILLIAMS, A MINOR

/s/ Randall Hank Williams, Jr.  
RANDALL HANK  
WILLIAMS, JR.

STATE OF TENNESSEE

DAVIDSON COUNTY

BEFORE ME, Mary Claire Rhodes, a Notary Public in and for said County in said State personally appeared Audrey Mae Williams, and Randall Hank Williams, Jr., known to me to be the persons whose names are affixed thereto, who, first being duly sworn, on oath depose and say: That the facts averred in the foregoing petition are true and correct to the best of their knowledge, information and belief.

I-2.10

/s/ Mary Claire Rhodes

SWORN to and subscribed before me this 7th day of  
March, 1967

/s/ Mary Claire Rhodes

Notary Public

Davidson County, Tennessee

My Commission Expires

July 27, 1969

Attorneys for Petitioners

W.D. Partlow, Jr.

Tuscaloosa, Alabama

and

J.M. Williamson

P.O. Box 64

Erbana, Illinois

by /s/ W.D. Partlow, Jr.

\_\_\_\_\_

## APPENDIX I-3

IN THE MATTER	)	IN THE CIRCUIT
OF THE GUARDIANSHIP	)	COURT OF
OF THE ESTATE OF	)	MONTGOMERY
RANDALL HANK	)	COUNTY, ALABAMA
WILLIAMS,	)	IN EQUITY,
A MINOR	)	NO. 27960

## ANSWER

Now comes Irene Smith, as Guardian for Randall Hank Williams, a minor, and for answer to the petition of Audrey Mae Williams to vacate the Court's decree of March 19, 1963, and for an accounting and transfer of assets, says as follows:

1. She admits the jurisdictional allegations of this paragraph and denies all other allegations thereof.

2. She denies the allegations of paragraph 2.

3. She admits her appointment as guardian for Randall Hank Williams, a minor, by this Court and denies all other allegations of paragraph 3.

4. She denies the allegations of paragraph 4 and for further answer states that the right of renewal for the copyrighted songs of the late Hank Williams did not come into being at his death but by statute comes into existence one year prior to the expiration of each of said copyrights, and such right of renewal is vested at that time in those persons designated by statute.

5. She denies the allegations of paragraph 5.

6. She denies the allegations of paragraph 6.

7. She denies the allegations of paragraph 7.



8. She denies the allegations of paragraph 8.
9. She denies the allegations of paragraph 9.
10. She denies the allegations of paragraph 10.
11. She denies the allegations of paragraph 11.

12. For further answer to paragraphs 5 through 11, she states that, after lengthly [sic] negotiations and with the full knowledge of Audrey Mae Williams and her attorneys, an agreement was made between Irene Smith as Guardian and Fred Rose Music, Inc., regarding the contingent renewal rights of the minor, Randall Hank Williams; that said agreement was made with approval of this Court and in what was believed by the Court and by the Alabama guardian to be in the best interest of the minor; that the Alabama guardian, as sister of the late Hank Williams, and her two children had contingent renewal rights in said copyrighted music, which she and they individually conveyed to Fred Rose Music for a valuable consideration paid to them; and that the father of the late Hank Williams and others have or may claim to have some contingent renewal rights to the copyrights of said music. All of such contingent rights affected and do affect the value of such contingent renewal rights.

For further answer she states that there are or may be other persons who have an interest in or claim to the contingent copyright renewals and that such claims, if any, will be determined in proceedings now pending before this Court in the administration of the Estate of Hiram "Hank" Williams. Nevertheless, a guardian ad litem should be appointed to represent the interests of all minors other than Randall Hank Williams who have or

may have any claim to contingent rights of renewal to the copyrighted music of Hiram "Hank" Williams.

For further answer she says that it is in the best interest of all parties to determine the validity of the contract made by her as guardian with Fred Rose Music, Inc., and the rights of all parties thereunder.

13. For further answer to paragraphs 1, 2 and 3 of the Complaint and to that aspect seeking to have the Alabama guardianship closed and its assets transferred to Petitioner as the Tennessee guardian, she says that Petitioner as Tennessee guardian has filed no accounting with the Chancery Court at Nashville until required by that Court to do so. She has now filed an accounting for 1964, 1965, and 1966 which shows that she has received as such guardian \$441,236.12 and spent \$447,366.01 and, therefore, is short in her accounting by some \$6,129.89. Her accounting has not been heard or approved by the Court. The information presently available on the actions of Petitioner as Tennessee guardian indicates she is unfit to administer the funds which she has received and is not a fit and suitable person to administer the funds of the Alabama guardianship which she now asks this Court to turn over to her.

The necessity for closing this guardianship and the question of paying the assets over to Petitioner as Tennessee guardian were before this Court in 1963 when Petitioner filed a similar bill, making substantially the same allegations. On her failure to answer interrogatories propounded to her for more than a year after this Court required answers to be made, the court dismissed her petition. Under the provisions of Equity Rule 75, this

order was a dismissal on the merits; therefore, the only question properly before the Court is that aspect relating to renewal rights as set out in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11.

JONES, MURRAY, STEWART  
& VARNER

BY /s/ Robert B. Stewart  
Attorneys for Irene Smith

I hereby certify that I have served copies of the foregoing answer on W.D. Partlow, Jr. and J.M. Williamson, Attorneys for Audrey Mae Williams, on Richard H. Frank, Jr. and Maury D. Smith, Attorneys for Fred Rose Music, Inc., and on J. M. Weinstein, Attorney for Metro-Goldwyn-Mayer, Inc., by mailing the same, postage prepaid, to them at their respective offices on this the 14 day of April, 1967.

/s/ Robert B. Stewart  
Of Counsel for Irene Smith

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## APPENDIX I-4

IN THE MATTER OF	)	IN THE CIRCUIT
THE GUARDIANSHIP OF THE	)	COURT OF
ESTATE OF RANDALL HANK	)	MONTGOMERY
WILLIAMS, A MINOR	)	COUNTY,
	)	ALABAMA
	)	IN EQUITY
	)	CASE NO. 27960

## ANSWER OF GUARDIAN AD LITEM

Comes now, Drayton N. Hamilton, guardian ad litem for any person or persons having an interest in or claim to the copyrights or renewals thereof or any other property in the custody or under the control of the court in this cause and who is a minor under the age of twenty-one years who is not now a party to these proceedings and represented by counsel, and has heretofore accepted the appointment as guardian ad litem in this cause and now for answer says:

1. That the guardian ad litem avers and shows unto this Honorable Court that he has made a diligent search for any heretofore unknown persons who have an interest in or claim to the copyrights or renewals thereof or any other property in the custody or under the control of the court in this cause and who is a minor under the age of twenty-one years who is not now a party to these proceedings and represented by counsel, and that the only person this guardian ad litem has been able to locate and determine as such a person is that person hereinafter referred to in Paragraphs 13 and 14 of this answer.

2. The guardian ad litem neither admits nor denies the allegations of Paragraph 1 of the petition.

3. The guardian ad litem neither admits nor denies the allegations of Paragraph 2 of the petition except any allegation in said Paragraph 2 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiram "Hank" Williams, and the guardian ad litem denies any such inference.

4. The guardian ad litem neither admits nor denies the allegations of Paragraph 3 of the petition.

5. The guardian ad litem denies each and every allegation of Paragraph 4 of the petition.

6. The guardian ad litem neither admits nor denies the allegations of Paragraph 5 of the petition.

7. The guardian ad litem neither admits nor denies the allegations of Paragraph 6 of the petition.

8. The guardian ad litem neither admits nor denies the allegations of Paragraph 7 of the petition except any allegation in said Paragraph 7 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiram "Hank" Williams, and the guardian ad litem denies any such inference.

9. The guardian ad litem neither admits nor denies the allegations of Paragraph 8 of the petition.

10. The guardian ad litem neither admits nor denies the allegations of Paragraph 9 of the petition except any allegation in said Paragraph 9 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiram "Hank" Williams, and the guardian ad litem denies any such inference.

11. The guardian ad litem neither admits nor denies the allegations of Paragraph 10 of the petition.

12. The guardian ad litem neither admits nor denies the allegations of Paragraph 11 of the petition except any allegation in said Paragraph 11 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

13. For further answer to the petition, as amended, the guardian ad litem says and affirmatively alleges that there is in the file of the cause entitled "In the Matter of the Estate of Hiriam "Hank" Williams, Case No. 25056, Circuit Court of Montgomery County, Sitting in Equity," a document carrying file No. 204, an agreement between decedent, Hiriam "Hank" Williams, and Bobbie W. Jett; that said document was filed for record in the Probate Court of Montgomery County, Alabama, under order of that court dated August 18, 1967; and your guardian ad litem affirmatively alleges that there was a girl child born to the said Bobbie W. Jett (named in said document and the signatory thereof) on or about, to-wit, January 6, 1953, in St. Margaret's Hospital, Montgomery, Alabama; that said child is living and is the daughter of Hiriam "Hank" Williams, and as such entitled to share equally in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

14. That the guardian ad litem further affirmatively alleges that the filing requirements of the statutes of the State of Alabama, with respect to legitimation of children,

have been complied with and alleges that the said child born to the said Bobbie W. Jett is the legitimate heir of Hiriam "Hank" Williams; and in support of such allegation your guardian ad litem attaches hereto and makes a part hereof, as if fully set out herein at this place, a certified copy of the order of the Probate Court dated August 18, 1967, made on proceedings had in said Court, which proceedings are now on file in this Court; and the guardian ad litem avers that said child is entitled to share in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

15. That your guardian ad litem affirmatively alleges, additionally, in the event this Honorable Court determines that there has been a failure or defect in the compliance with the statutes of the State of Alabama with respect to the legitimation of said child of Hiriam "Hank" Williams, that said child is the illegitimate daughter of Hiriam "Hank" Williams and as such is entitled to share in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

16. That your guardian ad litem further affirmatively alleges that said child of Bobbie W. Jett and Hiriam "Hank" Williams is the illegitimate daughter of Hiriam "Hank" Williams and as such is entitled to share equally with any other child or children in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the Estate of Hiriam "Hank" Williams by virtue of any copyrights,



or the renewals thereof, owned by or the property of the Estate of Hiram "Hank" Williams in any tunes, songs, music, compositions, or other materials belonging to the Estate of Hiram "Hank" Williams or heretofore assigned by the Estate of Hiram "Hank" Williams, or hereafter assigned or transferred by the Estate of Hiram "Hank" Williams, and avers in support of this allegation that the United States Copyright Laws control the distribution of any such funds from said royalties on said enumerated materials and avers that rights under such laws present a federal question and that this Honorable Court is bound and must give effect to said statutes and the decisions of the federal courts thereunder; that the proof in this case will affirmatively show that the Estate of Hiram "Hank" Williams does enjoy revenues from such sources enumerated which will be or should be accounted for in this proceeding and cause.

WHEREFORE, THESE PREMISES CONSIDERED, the guardian ad litem respectfully prays:

I. That upon hearing hereof the Court will render appropriate decree or decrees, orders or judgment;

(A.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiram "Hank" Williams, and was recognized as such by him, and duly and legally legitimated according to the statutes and laws of the State of Alabama, and is entitled to share in the copyrights or renewals thereof Hiram "Hank" Williams or of the Estate of Hiram "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.



(B.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and as such is entitled to share in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future, with any other child or children of the said Hiriam "Hank" Williams.

(C.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in the Estate of Hiriam "Hank" Williams, and in particular, any part of the Estate of Hiriam "Hank" Williams attributable to or resulting from royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the estate by virtue of any copyrights, or the renewals thereof, owned by or the property of the Estate of Hiriam "Hank" Williams in any tunes, songs, music, compositions or other materials belonging to the Estate of Hiriam "Hank" Williams or heretofore assigned by the said estate or hereafter assigned or transferred by the said estate.

(D.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States,

by virtue of any copyrights, or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(E.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States, by virtue of any copyrights or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(F.) And your guardian ad litem further prays that this Honorable Court will appoint a fit and suitable person, to be determined by this Court, as the legal guardian for the daughter of Hiriam "Hank" Williams by Bobbie W. Jett, born on or about, to-wit, January 6, 1953, at Montgomery, Alabama, upon such person entering into bond with sufficient sureties, to receive and account for any and all monies, sums, and property to which the said daughter, who is now a minor, may be entitled.

(G.) And your guardian ad litem further prays for such other, further, different or general relief to which the

above referred to girl child may be entitled in the premises and to which the Court may seem mete and just, and your guardian ad litem will ever pray, etc.

DONE this the 14 day of September, 1967.

/s/ Drayton N. Hamilton  
Drayton N. Hamilton, as guardian  
ad litem for any person or  
persons having an interest  
in or claim to the  
copyrights or renewals  
thereof or any  
other property in the custody or  
under the control of  
the court in this cause  
and who is a minor under the age of  
twenty-one years who is not now  
a party to these proceedings  
and represented by counsel.

I hereby certify that I have, today, this the 14 day of September, 1967, mailed a copy of the foregoing answer by United States Mail, first class, prepaid, to the following attorneys of record:

1. Joseph M. Williamson, Esquire,  
Post Office Box Drawer 64,  
Urbana, Illinois.
2. Messrs. Jones, Murray, Stewart and Varner,  
First National Bank Building,  
Montgomery, Alabama.
3. Messrs. Orenstein, Arrow and Lourie,  
119 West 57th Street,  
New York, New York 10019.

4. Messrs. Bardsdale, Whalley, Leaver, Gilbert and Frank, Nashville Bank and Trust Building,  
Nashville, Tennessee.
5. Messrs. Goodwyn, Smith and Bowman,  
325 Bell Building,  
Montgomery, Alabama.
6. William D. Partlow, Jr., Esquire,  
602 25th Avenue,  
Tuscaloosa, Alabama.

/s/ Drayton N. Hamilton  
Drayton N. Hamilton,  
guardian ad litem

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State of Alabama	) PROBATE
MONTGOMERY COUNTY	) COURT
	) NO. ____

18 August, 1967

IN RE: THE MATTER OF BABY JETT:

ORDER

This day came Drayton N. Hamilton who had heretofore, by letter dated August 12, 1967, identified himself to the Court as being the guardian ad litem in the cases styled "In the Matter of the Estate of Hiriam 'Hank' Williams, Deceased, In the Circuit Court of Montgomery County, Alabama, In Equity, No. 25056," and "In the Matter of the Guardianship of the Estate of Randall Hank Williams, a Minor, In the Circuit Court of Montgomery County, Alabama, In Equity, Case No. 27960," both of

which cases are pending, and made known that he had been authorized to secure, under court order, that certain document executed by Hank Williams during his lifetime (and identified in this Court as paper numbered "204" of the file in the Circuit Court Case No. 25056, and hereafter identified as Petitioner's Exhibit "No. 1"), and that he, as Petitioner, proposed to file said document, along with an affidavit of Mrs. Jo Kerr Cast, who was present when the document was originally executed; the letter having pointed out that the child about whom the document related had come into the jurisdiction of the Alabama Department of Pensions and Securities and had been placed by that agency for adoption; that the said Department was most concerned that no publicity be given to the identity of the child and that the child, its parentage and its adoption be protected by the Court; that Petitioner, in order to comply with the Alabama Statute, suggested that it was necessary in filing the document and taking testimony with respect to its execution and witnessing that the testimony be taken in chambers and only in the presence of those persons concerned with its filing; the Petitioner had further suggested in the letter that a construction of the document by the Circuit Court during the trial of the issues of the two Estates was essential; that a copy of the letter was posted to all attorneys of record in the two Estates. The said letter referred to was made Petitioner's Exhibit "No. 3" in this proceeding.

And appearing in Court, Drayton N. Hamilton, as Petitioner, made a preliminary statement, identifying himself as guardian ad litem in the two Estates, referred to above, and made known to the Court the proceedings

in the Circuit Court by which he had obtained the use of Petitioner's Exhibit "No. 1", and that he appeared for the purpose of filing the Exhibit "No. 1" to comply with the Alabama Statute and Petitioner called Robert B. Stewart as a witness;

That Robert B. Stewart identified the document, the signatures thereon, and testified that he took the acknowledgment; testified that Hank Williams' mother, Mrs. Stone, was present at the time the document was signed and that Mrs. Jo Kerr Cast was his only secretary at the time the instrument was prepared, that she took the document in shorthand in the presence of Hank Williams and Bobbie W. Jett, typed it and that the document has been in his file since execution and was submitted to the Circuit Court on order of Judge R. P. Emmet;

That Petitioner called Mrs. Jo Kerr Cast as a witness and Mrs. Jo Kerr Cast testified that she was employed by Robert B. Stewart, as his only secretary, in his office in Montgomery, Alabama, during the month of October, 1952, that she remembered Hank Williams and Bobbie W. Jett coming into the office, that she typed the Petitioner's Exhibit "No. 1", that she knew that it was signed by the said Hank Williams and Bobbie W. Jett, that she had executed an affidavit dated 14 August 1967, before Frances B. Skinner, a Notary Public, and that the physical arrangements of Robert B. Stewart's office was such that she could witness the signing by the said Hank Williams and Bobbie W. Jett of Petitioner's Exhibit "No. 1"; that she was willing for the said affidavit to be introduced and was further willing that it be attached to the Petitioner's Exhibit "No. 1".

And identified and introduced into evidence and filed were paper numbered "204" in Case No. 25056, as Petitioner's Exhibit "No. 1", the Cast affidavit as Exhibit "No. 2", and the letter of Drayton N. Hamilton, with the envelope, as Exhibit "No. 3", and

The Court understanding the testimony and the filing of the three exhibits, it is,

THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

(1) Exhibits "1", "2", and "3" be admitted to file and recorded.

(2) That a certified copy of Exhibit "No. 1" be substituted in lieu of the original and that the original be surrendered to Drayton N. Hamilton for its return to the custody of the Circuit Court of Montgomery County.

(3) That a signed copy of Petitioner's Exhibit "No. 2" be substituted in lieu of the original and that the original be attached to Petitioner's Exhibit "No. 1", and filed in the Circuit Court of Montgomery County with Petitioner's Exhibit "No. 1".

(4) That a certified copy of Exhibit "No. 3" be attached to the transcript of the record of this proceeding.

(5) That the transcript of this proceeding be placed on file in this Court and that a copy of same be transmitted to the Circuit Court of Montgomery County to the Honorable Richard P. Emmet, Judge of that Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this order be forwarded to the Circuit Court of Montgomery County, Alabama, to the

attention of Judge Richard P. Emmet, and a copy to the attorneys of record in the two Estates referred to herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that this proceeding be retained in the bosom of the Court pending further proceedings in the Circuit Court of Montgomery County, In Equity, Cases Nos. 25056 and 27960.

All other matters reserved.

DONE, this 18th day of August, 1967.

/s/ Perry O. Hooper  
Probate Judge

The State of Alabama            ) PROBATE  
MONTGOMERY COUNTY        ) COURT

I, PERRY O. HOOPER, as Judge of Probate in and for said County in said State, hereby certify that the within and foregoing is a full, true and correct copy of:

Decree rendered by the Probate Court on August 18, 1967 IN THE MATTER OF BABY JETT

as fully and completely as the same appears on file and of record in this office.

Given under my hand and official seal this the 13th day of September, 1967.

/s/ Perry O. Hooper  
Judge of Probate Court  
Montgomery County, Alabama

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## APPENDIX I-5

IN THE MATTER OF	:	IN THE CIRCUIT
THE GUARDIANSHIP	:	COURT OF
OF THE ESTATE OF	:	MONTGOMERY
RANDALL HANK	:	COUNTY,
WILLIAMS, a minor.	:	ALABAMA
	:	IN EQUITY
	:	CASE NO. 27,960

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This cause comes on to be heard upon the pleadings, all as noted by the Register.

This Court finds it has jurisdiction of the cause and of the parties.

As to the question of jurisdiction of the cause, the Court rejects the contentions of Respondent Smith and Respondent Rose as to the application of any Statute of Limitation.

This Court has now exercised continuing jurisdiction of this guardianship for some fifteen years. In this or any other guardianship there occurs nothing during the course of the guardianship to which any Statute of Limitation applies insofar as any conduct between the guardian and ward. The inherent rules of equity jurisdiction would allow a subsequent review of any conduct by the guardian. The relationship existing between a guardian and a ward is never a relationship of opposing advocates. As such, the approval by the Court, exercising continuing jurisdiction of the guardianship, of the conduct of a guardian in any situation is subject to subsequent review by that Court upon additional evidence being presented. It matters not in what mode of pleading such evidence is

presented. Indeed, a Court, *ex mero motu*, should act upon such evidence. The only rule prescribed by law of the state is to protect the interest of the ward. Likewise, any third party desirous of contracting with the ward is subject to the same continuing jurisdiction.

The Court rejects further the contention that only upon actual and extrinsic fraud can the previous decree of *this* Court be vacated. The cases relied upon in this contention concern the vacating of decrees by one Court of other Courts' decrees. None of the cases cited concern an interest of a Court's Ward.

This Court, exercising continuing jurisdiction of the guardianship and being governed only by the rule of law which requires the best interest of the ward to be paramount, is allowed to weigh any legal evidence properly presented at any time now or subsequent as to any contractual relationship previously approved by this Court. There exists no limitation to this inherent right of equity in protecting a ward.

It follows that this Court has jurisdiction of this cause and has the duty at this time of looking further into the matter of this Court's Decree in this same cause dated March 19, 1963.

A finding of fact in this guardianship is incomplete without an incorporation of the facts elicited from the evidence in scores of other hearings in this case and in the Estate of Hiriam (Hank) Williams, Case No. 25,056, Fifteenth Judicial Circuit of Alabama.

This Court has carefully reviewed the evidence in its entirety. The review has not been in the light of any

narrow restrictions suggested by the contentions of jurisdictional or statutory limitations or burdens of proof as to actual and extrinsic fraud. This Court has weighed the evidence only in the light of the best interest of this ward. In this light, and with the benefit of hindsight in now looking back through the years to the year 1963, it is inescapable that the contract in question was then and is now in the best interest of the ward. The Court finds that the relationship created by the contract is provident for the ward.

The Court finds there are aspects of the relationship created by this contract which are not subject to the utmost clarity. These aspects concern the unpublished artistic work of the deceased father of the ward; the benefits of affiliation with the performing societies; and future royalty schedules being more completely detailed. The Court finds the best interest of the ward requires that these matters be spelled out in detail. The Court is aware that these questions might possibly be matters within the framework of the Estate, however, they have a direct bearing on the guardianship.

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiram (Hank) Williams.

The Court is impressed with the argument of the Guardian ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when

illegitimate off-spring should be afforded adequate property rights. The common law is severe in calling such off-spring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off-spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been permanently adopted under the very excellent, wise, and beneficial direction of this State's Department of Pensions and Security. By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

The Court is of opinion that the Copyright Law as interpreted by the Supreme Court of the United States in *DeSylva v. Ballentine*, 351 U.S. 570; 100 L.Ed. 1415; 76 Sp. Ct. 974, preclude the inclusion of any heir other than the ward of this Court as having any right of renewal, provided the ward survives to the appropriate time.

Notwithstanding the proposed revision of the Copyright Law of this nation pending in the Congress, this Court retains the same opinion.

The pen of this Court cannot rest without one final finding. The attorney for this guardian and for the estate traces his professional connection from the time when the name Hank Williams was but another "drifter" passing

before the Bench of a local small claims and misdemeanor Court. But for the professional care, tenacity, diligence, interest and concern of this gentleman, the estate of this ward would not be as considerable as it is, nor would its future prospects be so bright. His conduct is in the highest tradition of a very noble profession.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That the contract in question is in the best interest of the ward and that the decree of this Court dated March 19, 1963 should not be vacated.

2. That the child born to one Bobbie W. Jett is not an heir of the late Hiram (Hank) Williams within the meaning of the Copyright Law.

3. That certain provisions of the contract do not contain sufficient clarity. That these provisions are subject to additional attention by the parties hereto. That in the failure of the parties hereto to reach accord, the Court upon application will proceed to adjudge these matters. That the Court retains jurisdiction of this cause to effect this provision.

It is regrettable cordiality does not exist in this situation. It would seem that the large and significant community of interest between the ward and Respondent Rose could build a bridge which would renew and continue one of the very few genuine traditions found in the entire entertainment industry, now noted for its phony traditions. It is hoped by the Court that this area of negotiation will lead to this.

4. That the fee of the Guardian ad Litem be \$5,698.72 which sum shall include all expenses including travel and that the same be taxed as part of the cost.

5. That the cost of these proceedings be taxed one-third against the guardianship and two-thirds against Respondent Rose. The taxing against the guardianship is based upon the fact that the funds expended belong to the ward and the ward is now the only petitioner.

DONE, this the 30 day of Jan, 1968.

/s/ Richard P. Emmet  
Circuit Judge

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APPENDIX J-1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
CATHY YVONNE STONE, :  
 :  
 : Plaintiff, :  
 :  
 : -against- :  
 :  
 : HANK WILLIAMS, JR., BILLIE :  
 : JEAN WILLIAMS BERLIN, : 85 Civ. 7133 (JFK)  
 : CHAPPELL MUSIC COMPANY, : OPINION and  
 : a division of CHAPPELL & : ORDER  
 : CO., INC., ABERBACH :  
 : ENTERPRISES, LTD., ACUFF- :  
 : ROSE OPRYLAND MUSIC, :  
 : INC., MILENE-OPRYLAND :  
 : MUSIC, INC., WESLEY H. :  
 : ROSE and ROY ACUFF, :  
 : Individually and as :  
 : Trustees in Liquidation :  
 : for Stockholders of :  
 : Fred Rose Music, Inc. :  
 : and Milene Music Inc., :  
 : FRED ROSE MUSIC, INC., :  
 : and MILENE MUSIC, INC., :  
 :  
 : Defendants. :  
 :  
 : -----X

APPEARANCES:

For Plaintiff:

James A. Goodman, Esq.  
Rudin, Richman & Appel  
Beverly Hills, CA

Of Counsel: Marjorie Smith, Esq.  
Coblence & Warner  
New York, NY

J-1.2

F. Keith Adkinson, Esq.  
Washington, D.C.

For Defendants Hank Williams, Jr.,  
Wesley H. Rose, Roy Acuff,  
Fred Rose Music, Inc. and  
Milene Music, Inc.:

Alan L. Shulman, Esq.  
Silverman, Shulman & Slotnick, P.C.  
New York, NY

For Defendants Acuff-Rose Opryland Music, Inc.  
and Milene-Opryland Music, Inc.:

Lawrence I. Fox, Esq.  
Berger & Steingut  
New York, NY

For Defendants Billie Jean Williams Berlin, Chappell  
Music Company and Aberbach Enterprises, Ltd.:

Thomas R. Levy, Esq.  
New York, NY

JOHN F. KEENAN, United States District Judge

JOHN F. KEENAN, United States District Judge:

Background

Plaintiff, born on January 6, 1953, brings this action concerning her allegation that she is the illegitimate daughter of the late country and western singer Hank Williams, Sr. ("Hank") and is entitled to a share of the royalties derived from Hank's compositions ("the Works").

Plaintiff has sued ten defendants: Hank Williams, Jr., the legitimate son of Hank and Audrey Mae Williams; Billie Jean Williams Berlin, who was married to Hank



when he died on January 1, 1953; Aberbach Enterprises, Ltd., the owner of the copyright renewal rights in the Works that previously had been held by Berlin and were transferred to Aberbach pursuant to a May 28, 1969 agreement; Chappell Music Company, an entity that acts as an administrative agent for Aberbach in connection with the Berlin renewal interest; Acuff-Rose Opryland Music, Inc. ("ARO"), the successor in interest of both the original rights and the renewal rights in the Works held by Williams, Jr.; Milene-Opryland Music, Inc. ("MOM"), an additional successor in interest in the original rights and the renewal rights in the Works held by Williams, Jr.; Fred Rose Music, Inc. ("FRMI"), a corporation that, in 1963, obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; Milene Music, Inc., a corporation that, in 1963, also obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; and Roy Acuff and Wesley H. Rose, Trustees in Liquidation for FRMI and Milene Music.

The Third Amended Complaint alleges two causes of action. First, the complaint avers that plaintiff is Hank's illegitimate daughter, and as such is a "child" entitled to one-third of the rights, and interests in and derived from, the Works pursuant to the United States Copyright Act of 1976. Second, plaintiff contends that defendants ARO, MOM, Rose, Acuff, FRMI and Milene and certain non-parties engaged in a conspiracy that lasted over fifteen years. The goal of this alleged scheme was to prevent plaintiff from perfecting her copyright interest in the Works so that the defendants would have the sole financial benefit of the copyrights. The defendants purportedly achieved this goal by withholding from plaintiff and the

Alabama state courts information about her identity and by arranging for the appointment of Drayton Hamilton as guardian ad litem for plaintiff during legal proceedings held in 1967-1968. In addition, the scheme allegedly included a 1963 agreement made by Williams, Jr., through his guardian, with FRMI and Milene providing for Williams, Jr. to transfer his rights in the Works.

Currently pending before the Court are three motions. The defendants have jointly moved for summary judgment asserting, *inter alia*, that the claims are barred by the copyright statute of limitations, laches, equitable estoppel, res judicata, collateral estoppel, and the terms of the 1976 Copyright Act. Plaintiff has cross-moved for partial summary judgment on her claim that she is Hank's natural daughter and that she is entitled to an undivided one-third interest in all renewal rights in the Works. Defendant Berlin, Chappell Music and Aberbach Enterprises have moved for partial summary judgment on the ground that if plaintiff were to prevail on her first cause of action, Berlin is entitled to a one-half interest in the Works and Hank's children are entitled jointly to a one-half interest.

For the reasons set forth below, the Court grants the defendants' motion for summary judgment and the complaint is dismissed in its entirety. The Court, therefore, does not reach the questions raised in either plaintiff's partial summary judgment motion or in the partial summary judgment motion made by defendants Berlin, Chappell Music and Aberbach Enterprises.

## Facts

For the purposes of defendants' summary judgment motion, the Court assumes that Hank is plaintiff's natural father. Her natural mother is Bobbie Jett. Plaintiff was conceived in approximately April, 1952. Although Hank allegedly wanted to raise the child, his desires did not extend to marrying the child's mother, Bobbie Jett. This intention was made unmistakably clear on October 18, 1952, when Hank married defendant Berlin. However, Hank entered a contract with Jett three days prior to marrying Berlin. The agreement addressed custody issues and called for him to bear various financial responsibilities in connection with the birth of Jett's child. The contract also stated that paternity was in doubt and not admitted by the agreement. On January 1, 1953, Hank Williams, Sr. died at 29 years of age. Less than one week later, on January 6, 1953, Bobbie Jett gave birth to plaintiff.

After Jett left the hospital, the baby was left in the care of Lillian Stone and Marie Harvell, Hank's mother and cousin respectively. On December 23, 1954, a final decree of adoption was entered by the Montgomery County, Alabama, Department of Public Welfare giving Mrs. Stone the child. Irene Smith, Hank's sister, promised to care for the child in the event something happened to Mrs. Stone. Sadly, Mrs. Stone died on February 26, 1955 and Smith broke her pledge. Plaintiff was made a ward of the State of Alabama on April 29, 1955 and remained a ward of the state until February 21, 1956. On that date, an interlocutory order of adoption was entered giving custody to the Deupree family. On April 23, 1959, a final decree of adoption was entered.

While plaintiff was being raised by the Deuprees and living her early life, events concerning Hank's estate and other collateral issues continued to unfold. Plaintiff was awarded \$2,000 as her homestead interest in Mrs. Stone's residence after Mrs. Stone died. This money was placed in an interest-bearing account with the Circuit Court of Montgomery County, Alabama, to be held for plaintiff until she turned twenty-one years old on January 6, 1974. As will be described below, plaintiff only became aware of this bequest in approximately December, 1973. In 1963, the guardian of Williams [sic], Jr. petitioned the Circuit Court of Montgomery County, Alabama, for permission to sell Williams, Jr.'s rights in the renewal term copyrights in the Works to FRMI. The court granted the request and an agreement was entered on March 20, 1963.

This agreement resulted in litigation taking place during 1967 and 1968 in the Circuit Court. The action attempted to determine all rights in the Works and involved Williams, Jr.'s petition to vacate the 1963 agreement. Thus, an inquiry was made into the existence of any unknown heirs to the estate. Drayton N. Hamilton, a Montgomery attorney who had previously been appointed as plaintiff's guardian ad litem in connection with Lillian Stone's estate, was named guardian ad litem by the Circuit Court to represent any minors who might have an interest in Hank's estate. After conducting an investigation, Hamilton told the court that plaintiff was the only potential additional heir. Hamilton contacted the Deuprees through the Alabama Department of Pensions and Security ("Alabama P & S") and advised them of the 1967-1968 proceedings. Mr. and Mrs. Deupree came to

Montgomery and apparently had a meeting with Hamilton. Hamilton was told not to pursue any claim on behalf of plaintiff. Despite this request, Hamilton continued to press vigorously the rights of plaintiff as Hank's natural daughter. During his activities, Hamilton obtained a copy of the 1952 contract between Hank and Jett which was introduced as evidence in the Circuit Court. After conducting evidentiary hearings which were widely reported in the Alabama press, the Circuit Court ruled that plaintiff was not an heir entitled to any inheritance from Hank's estate. Hamilton then unsuccessfully sought leave to appeal the court's rulings, despite the wishes of the Deuprees.

The matter remained closed until approximately the end of 1973. By this time, plaintiff was a college student at the University of Alabama. The Deuprees went to Tuscaloosa to visit plaintiff at college during either the end of December, 1973 or the early part of January 1974. Since plaintiff was on the verge of turning twenty-one years old, the issue of Lillian Stone's estate needed to be addressed. At one point during the visit of her adoptive parents, plaintiff went to the Deuprees' hotel room. Although the accounts of plaintiff and Mrs. Deupree differ slightly, the following is undisputed. Mrs. Deupree told plaintiff that Hank Williams, Sr. either was, or could be, her biological father, and that after her twenty-first birthday plaintiff had to go to the Montgomery courthouse to pick up an inheritance from the estate of Lillian Stone. Soon thereafter, plaintiff went to Montgomery and was accompanied by an uncle, Stanley Fountain, who was a United States Marshal. Her conversation with Mrs. Deupree and her trip to Montgomery prompted plaintiff to

visit a library in Tuscaloosa to research Hank's life. Plaintiff read a book by Roger Williams entitled *Sing a Sad Song* which chronicled Hank's life. The book contained a passage concerning a child born to a brunette from Tennessee. The child, according to the book, was cared for by Lillian Stone until the child was adopted. After her discussion with Mrs. Deupree and the receipt of a \$3,800 inheritance from the Stone estate, plaintiff thought that this child might have been herself when she read the book in early 1974. Plaintiff, who claims Mrs. Deupree told her that there was no proof showing Hank to be her natural father and that everything had already been decided against plaintiff, then chose not to pursue the matter further.

Another significant event occurred during 1976. Plaintiff told Nicholas Braswell, a Montgomery attorney who was married to one of plaintiff's college sorority sisters, that she was adopted and might be the biological daughter of Hank Williams, Sr. Braswell was familiar with Judge Richard Emmett [sic] who had presided over the 1967-1968 Circuit Court proceedings. Braswell told plaintiff that Judge Emmett [sic] had a tremendous interest in Hank and had memorabilia from Hank's career all over his office. Braswell asked plaintiff if she objected to his calling up Judge Emmett [sic] and passing along her claim; plaintiff told Braswell to call Judge Emmett [sic]. After Braswell spoke with the judge, he again spoke with plaintiff, telling her that Judge Emmett [sic] would like to meet her. Plaintiff, however, never tried to contact the judge while he was in Montgomery. At some point, Judge

Emmett [sic] moved from Montgomery, Alabama, to California. Although plaintiff learned about this relocation in the newspapers, she never attempted to find out where in California Judge Emmett [sic] moved to, and never attempted to contact him.

In December, 1980, plaintiff received a telephone call from Mr. Deupree. During the conversation, Deupree told plaintiff that he had made certain decisions in the 1960's which he had come to regret. Presumably, these decisions concerned the 1967-1968 proceedings in the Circuit Court. Deupree stated that if plaintiff wanted to discover whether Hank was her biological father, he would help in any way possible. Deupree evidently had this change of heart after watching Williams, Jr. give an interview on a television program. Deupree told plaintiff that he would send her some newspaper articles and the names of certain individuals with whom he had been in contact during the 1960's.

At this point, plaintiff attempted to discover what her file with the Alabama P & S contained. Although plaintiff could not obtain access to her file, she does not recall the reasons given by the Alabama P & S. She then told the Alabama P & S that she wanted to contact her natural mother. As a result, the department wrote a letter to Willard Jett, Bobbie Jett's uncle. During 1981, plaintiff once again read books and newspaper articles on Hank. Yet, it was in 1981 that she read an article that referred to Hank's cousin, Marie Harvell. She had previously spoken with Charles Carr, Hank's chauffeur, a name she uncovered by reading a book. Carr told plaintiff about the existence of Harvell. During 1981, plaintiff visited Harvell. Upon seeing a birth mark on plaintiff's arm, Harvell



began to cry, evidently believing that plaintiff was Hank's daughter. Plaintiff made subsequent visits to the Harvell home and discussed Hank, Bobbie and their relationship. Harvell also gave plaintiff Willard Jett's name. Plaintiff telephoned Willard, who resided in Nashville, and was told that Bobbie had died. Plaintiff had additional telephone conversations with Willard and had meetings with his wife. Later in 1981, plaintiff travelled to Nashville and met other members of the Jett family. In addition, plaintiff went to see the Cooks, a family that cared for plaintiff after the death of Mrs. Stone and prior to her adoption by the Deuprees. In October, 1981, plaintiff travelled to California to gather more information about Bobbie Jett; plaintiff made no attempt to locate Judge Emmett [sic] during this trip.

Plaintiff's investigation also brought her to Drayton Hamilton and another lawyer, Joseph Matranga. Plaintiff went with Hamilton to the Montgomery courthouse to examine records pertaining to the 1967-1968 proceeding. Mr. Deupree retained Matranga to assist with the investigation and Matranga recommended to plaintiff that she solicit Hamilton's assistance in locating pertinent documents. Hamilton stated that he would send material to Matranga. Despite being in contact with Hamilton and seeing a large box of documents in 1981, it was not until 1984 that plaintiff asked Matranga for the documents he had received from Hamilton. In September, 1984, plaintiff met F. Keith Adkinson, an attorney who she subsequently married. On September 12, 1985, plaintiff brought this lawsuit.

Over the past twenty years, other events touching on this case have also transpired. Since January 1, 1974,



Bobbie Jett, Audrey Mae Williams and George Deupree have all died. In addition, Robert Stewart, who drafted the 1952 contract between Hank and Bobbie, and represented Hank and members of his family and the estate, died in the intervening years. Various financial transactions have been completed during the past twenty years. FRMI and Milene paid royalties from the Works to Hank's estate, Williams, Jr. and Audrey Mae Williams. Pursuant to the 1963 agreement, FRMI, Milene, ARO and MOM have all paid royalties to Williams, Jr. based on the Works' renewal term rights. Consequently, Williams, Jr. has reported these royalties on his personal income taxes over the years. After the payment of royalties for the period ending June 30, 1985, ARO and MOM have withheld from Williams, Jr. payments of royalties arising out of the renewal term rights pursuant to an assignment. ARO and MOM, as well as FRMI and Milene, reported on their tax returns those royalty sums not paid to Williams, Jr., Audrey Mae Williams or the estate. In addition, these entities executed licenses and contracts for the exploitation of the Works. When FRMI and Milene were liquidated, the Trustees sold the copyrights that the companies held, warranted their good title and pledged to indemnify the purchaser for any breach of the warranties. Berlin, Chappell and Aberbach have also received royalties based on Berlin's interest in the renewal term rights. Each has reported these royalties on their respective income taxes.

## DISCUSSION

The parties in this hotly contested action have thoroughly briefed several areas including the 1976

Copyright Act, the statute of limitations, res judicata and collateral estoppel. However, this entire controversy turns on a basic and time honored principle: "Equity aids the vigilant, not those who slumber on their rights." *Standard Oil Co. of New Mexico v. Standard Oil Co. of California*, 56 F.2d 973, 975 (10th Cir. 1932).

The doctrine of laches serves as a complete bar to a plaintiff's claims if the defendants demonstrate an unreasonable and inexcusable delay by plaintiff in bringing the lawsuit and that the delay resulted in undue prejudice suffered by the defendants. *Dalsis v. Hills*, 424 F. Supp. 784, 788 (W.D.N.Y. 1976). Laches requires a balancing of the equities between the parties. *Potash Co. v. International Minerals & Chemical Corp.*, 213 F.2d 153, 156 (10th Cir. 1954). Therefore, the longer a plaintiff unjustifiably delays in asserting a claim, the lesser the showing of prejudice that will be required of the defendant. *Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 843 (D.C. Cir. 1982). The laches calender clearly does not turn its pages when an individual is justifiably ignorant of the facts giving rise to a claim. *Potash Co.*, 213 F.2d at 155. However, a plaintiff cannot look away from facts that could support a claim, and then later – in this case, many years later – begin to act on those facts and obtain judicial relief. Thus, the clock begins to tick when plaintiff has either actual or constructive notice of facts supporting a cause of action. *Knox v. Milwaukee County Board of Elections Commissioners*, 581 F. Supp. 399, 402 (E.D. Wis. 1984); *Anaconda Co. v. Metric Tool & Die Co.*, 485 F. Supp. 410, 427 (E.D. Pa. 1980). As the Supreme Court noted nearly a century ago,

[t]he defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts.

*Foster v. Mansfield, Coldwater and Lake Michigan Railroad Co.*, 146 U.S. 88, 99 (1892).

An analysis of plaintiff's conduct demonstrates that she ignored facts as early as 1974 that alerted her to the strong possibility that Hank Williams, Sr. was her biological father. Indeed, a cynic might suggest that plaintiff slumbered peacefully, and knowingly, on her rights until she was awakened by the attractive sound of a ringing cash register.

As plaintiff reached twenty-one years of age in January, 1974, she was told, at a minimum, that she could be the biological daughter of one of the most successful country and western singers of all time, Hank Williams, Sr. Soon thereafter, she went to the courthouse in Montgomery to pick up an inheritance of over \$3,000 from the estate of a woman who plaintiff could have readily discovered to be Hank's mother. Plaintiff testified that this amount was a significant figure to her when she went to the courthouse at age twenty-one. Despite the fact that she was an adult at the time, plaintiff was accompanied to court by her uncle, a federal marshal, because of the Deuprees' concern that news reporters would be present.

At this point, a reasonable person would clearly be on notice that Hank was suspected to be plaintiff's biological father. In fact, plaintiff herself entertained this thought. After receiving her inheritance, she went to a library and read a biography of Hank, *Sing a Sad Song*, written by Roger Williams. Plaintiff believed that she might have been the subject of a passage describing Hank's illegitimate daughter born in 1953. However, she did nothing to pursue the issue other than to ask the Deuprees certain questions, the subject matter of which she does not remember. Plaintiff, an adult, accepted the statements of the Deuprees that there was no proof of Hank's parentage and that "it had all been decided." Moreover, in 1976 plaintiff learned that Judge Richard Emmett [sic] was a long time Hank Williams buff. Plaintiff permitted the judge to be told of her claim that she might be Hank's illegitimate daughter, but opted not to see him after learning of the judge's desire for a meeting. Indeed, once the judge moved to California, she did not attempt to locate him.

The fact that plaintiff made a calculated decision not to pursue her biological link to Hank during the 1970's is made irrefutable by her deposition testimony. At her deposition on November 5, 1986, plaintiff testified as follows:

Q. Do you recall ever having the feeling that you did not want anyone to know that you may be the daughter of Hank Williams or believed yourself to be the daughter of Hank Williams?

. . . .

A. Yes, sir.

Shulman Aff., Ex. 2 at 332-33.

Q. Is there any reason to think that it's not true? That those were your feelings between the period of January or December '73 or January '74 through 10/17/79?

A. No, sir.

*Id.* at 333.

Q. Let's try to put this in prospective [sic]. We've already discussed one time in your life that you didn't want to be linked with Hank Williams; is that right?

A. Yes, sir.

Q. But you don't have a specific knowledge as to the beginning and ending period of that feeling; is that correct?

A. That's correct.

Q. Based upon this testimony and your prior testimony, you had that feeling, did you not, between, at least December '73 and 10/17/79?

.....

Q. Based upon this information and your prior testimony?

A. Yes, sir.

Q. It's your statement that you did not want to be identified in any way with Hank Williams between December '71 [sic] and 10/17/79 in any way, correct?

.....

A. That's correct.

*Id.* at 342-43.

As a result of her desire not to be connected with Hank, plaintiff did not attempt to contact any individual who had personal knowledge of plaintiff's parentage. Plaintiff never attempted to contact any relative of either Hank or Bobbie Jett, any of Hank's personal or professional acquaintances, Robert Stewart, the attorney for Hank's estate, author Roger Williams, or any member of the press with knowledge of the 1967-1968 proceedings. For whatever reason, plaintiff did not seriously look into her link with Hank until 1981. It is beyond dispute that plaintiff engaged in an unreasonable and inexcusable delay in bringing her claim.

The Court now turns to whether plaintiff's delay resulted in undue prejudice to the defendants. The types of prejudice that support the defense of laches include " 'the loss of evidence that would support the defendant's position,' " or the defendant having changed his position in a manner that would not have occurred if the plaintiff had acted promptly. *Goodman v. McDonnell Douglas Corp.*, 606 F.2d 800, 808 n.17 (8th Cir. 1979) (quoting *Tobacco Workers International Union Local 317 v. Lorillard Corp.*, 448 F.2d 949, 958 (4th Cir. 1971)), *cert. denied*, 446 U.S. 913 (1980). Prejudice may also be found where a defendant has acted in reliance on the "false sense of security" that he was lulled into by the plaintiff's delay. See *Independent Bankers Assoc. v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam); *Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1334 (7th Cir. 1977), *cert. denied*, 434 U.S. 1070 (1978); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

The prejudice suffered by the defendants in this case is profound. Obviously, their first line of defense to plaintiff's claim is that she is not Hank's biological daughter. However, the events leading up to her birth took place in 1952. Thus, even if plaintiff proceeded promptly during the middle to late 1970's, the defendants would confront the obstacles of fading memories and lost proof. This problem is grossly exacerbated by plaintiff's decision to forgo pursuing a connection with Hank's legacy during the 1970's, only to turn around in the 1980's and stake a claim to his estate. As noted earlier, in the years since plaintiff first knew of her possible relationship with Hank, individuals with personal knowledge of relevant events have died. In the forefront of these individuals is Bobbie Jett, who died in California during 1974. Her testimony, either in person or preserved in a deposition, would be most important evidence in the case. Moreover, those individuals who would be available to testify have recollections of the pertinent events that have faded and become less reliable over time. This fact is very clear when one reads the depositions submitted by plaintiff in support of her motion for partial summary judgment.

The defendants have also suffered undue prejudice in that they have entered financial and business transactions during the period of plaintiff's inertia based on the belief that Hank Williams, Jr. was Hank's only child. FRMI, Milene and their trustees made warranties on the copyrights when they sold their interest. ARO and MOM purchased the assets of FRMI and Milene, and the relevant copyrights, before learning of plaintiff's allegations. Moreover, all of the defendants who realized income



derived from the exploitation of the copyrights paid income taxes based on those proceeds. These defendants now face a situation where, if plaintiff prevailed, they would lose the money paid in taxes that was based on a share of the copyright royalties that was above the accurate amount, or face the daunting and costly task of seeking to recover these monies from the federal treasury.

It is important to note that the event which spurred plaintiff to action in December, 1981 was a conversation with Mr. Deupree that lacked any startling new revelation. He merely told her that she could be Hank's daughter, that he regretted certain actions he had taken during the 1960's and that he would assist plaintiff in discovering whether Hank was her biological father. After the conversation, Mr. Deupree sent plaintiff some articles and certain names, but did not provide plaintiff with materials that would not have been available to her had she diligently pursued the issue in the mid-1970's.

Laches is not a doctrine concerned merely with the passage of time. Rather, laches also addresses the changes in conditions and relationships which are intertwined with the lawsuit over that passage of time. See *Galliher v. Cadwell*, 145 U.S. 368, 373 (1892); *Lingenfelter v. Keystone Consolidated Industries, Inc.*, 691 F.2d 339, 340 (7th Cir. 1982) (per curiam). Many transactions have taken place, human memories have faded and several key people have died since plaintiff first knew that Hank Williams, Sr. might be her father. Plaintiff was an adult and made a conscious choice during the 1970's; it would be unfair to the defendants to permit plaintiff to reap the benefits of her recent change of heart.



J-1.19

CONCLUSION

The defendant's motion for summary judgment is granted and the complaint is hereby dismissed. The case is to be removed from the active docket of this Court.

SO ORDERED.

Dated: New York, New York  
September 6, 1988

/s/ John F. Keenan  
JOHN F. KEENAN  
U.S.D.J.

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APPENDIX J-2

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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No. 732 – August Term, 1988

(Argued February 1, 1989 Decided APR 21, 1989)

Docket No. 88-7860

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CATHY YVONNE STONE, an Individual,  
*Plaintiff-Appellant,*

v.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS  
BERLIN, CHAPPELL MUSIC COMPANY, a Division  
of CHAPPELL & CO., INC., a Delaware Corporation,  
ABERBACH ENTERPRISES, LTD., a New York  
Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC.,  
a Tennessee Corporation, MILENE-OPRYLAND MUSIC,  
INC., a Tennessee Corporation, WESLEY H. ROSE  
and ROY ACUFF, Individually and as Trustees in  
Liquidation for Stockholders of Fred Rose Music,  
Inc., and Milene Music, Inc., FRED ROSE MUSIC,  
INC., a Tennessee Corporation, and MILENE  
MUSIC, INC., a Tennessee Corporation,

*Defendants-Appellees.*

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Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE  
*Circuit Judges*

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Cathy Yvonne Stone appeals the judgment of September 7, 1988 of the United States District Court for the

Southern District of New York (Keenan, J.) granting defendants' motion for summary judgment on the ground of laches, and denying her cross motion for summary judgment, and dismissing her complaint.

Affirmed.

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MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Susan H. Green, Rudin & Appel, Beverly Hills, California; Marjorie M. Smith, Coblenz Warner Hamilton & Smith, New York, New York, *cf* counsel), *for Plaintiff-Appellant*.

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Jr., Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, *Attorneys for Defendants-Appellees Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc., and Milene Music, Inc.*; Lawrence I. Fox, Stephen K. Rush, Katherine M. Allen, Berger & Steingut, New York, New York, *Attorneys for Defendants-Appellees Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music, Inc.*; Thomas R. Levy, New York, New York, *Attorneys for Defendants-Appellees Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd., all of counsel*), *for Defendants-Appellees*.

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CARDAMONE, Circuit Judge:

Cathy Yvonne Stone brought this action in the United States District Court for the Southern District of New York (Keenan, J.) for her purported share of copyright renewal rights to songs composed by Hank Williams, Sr.,

her natural father. The defendants in this action are Hank Williams, Jr., the son of Hank Williams and stepson of Billie Jean Williams Berlin, who was married to Hank Williams at the time of his death, and a number of music companies or individuals that have obtained an interest in the copyright proceeds of the Williams' songs including: Aberbach Enterprises; Chappell Music Company; Acuff-Rose Opryland, Inc.; Milene-Opryland Music, Inc.; Fred Rose Music, Inc.; Milene Music, Inc.; Roy Acuff; and Wesley H. Rose. The sole issue presented is whether the district court abused its discretion when it granted defendants' motion for summary judgment and dismissed appellant's complaint on the grounds of laches. Even granting to Ms. Stone's situation the fullest stretch of sympathy, her own delay and procrastination in the end bars her suit. The district court's judgment, therefore, is affirmed.

## I FACTUAL BACKGROUND

The dispute arises over copyright renewal proceeds for 60 published and copyrighted songs written or performed by country and western singer Hank Williams (Williams, Sr.) who died intestate on January 1, 1953 at the age of 29. During his lifetime the well-known singer and composer wrote such popular hits as "Your Cheatin' Heart" and "Hey Good Lookin' ". We set forth the facts briefly in chronological order.

Appellant Stone was born on January 6, 1953 in Alabama, five days after Williams, Sr. died. While Ms. Stone's biological mother, Bobbie Jett, was pregnant with her in October of 1952, she and Williams, Sr. executed an

agreement under which he acknowledged that he might be the father of appellant, but specifically did not admit paternity. The agreement further provided that Williams, Sr. pay Bobbie Jett for Ms. Stone's support, and placed the infant's custody until age 2 in Lillian Williams Stone, mother of Williams, Sr., who was present at the drafting and the execution of the agreement together with the two principals. Pursuant to its terms, Lillian Stone adopted plaintiff, and Bobbie Jett left for California. Until her death in 1955 Mrs. Stone cared for appellant. At that point, Williams, Sr.'s sister, Irene Smith, reneged on her promise to care for Cathy Stone if anything happened to Lillian Stone. As a result, appellant became a ward of the State of Alabama, and at age three in 1956 a foster child of the Deupree family. The Deuprees adopted her in 1959.

Williams, Sr. had a son, Hank Williams, Jr. The assignment of Hank Williams, Jr.'s copyright interests in his father's music generated litigation in 1967 and 1968 in the Circuit Court of Montgomery County, Alabama. That court appointed a guardian *ad litem*, attorney Drayton Hamilton, to ascertain any unknown potential heirs to the Williams estate and to represent their interests. After investigating, Hamilton concluded that the only such person was appellant Stone. Unbeknownst to Ms. Stone, her adoptive family, the Deuprees, had asked Hamilton to leave her out of the 1967 proceedings, because they thought it unlikely that she would win and were worried that their then 14-year-old daughter would be subjected to embarrassing publicity because of her status as the illegitimate child of a famous country western singer. Nonetheless, Hamilton zealously litigated Ms. Stone's interests, but to no avail. The Alabama court determined

that Hank Williams, Jr. was the sole heir of his father, and further held that appellant, as a natural child who had been adopted by another family, had no rights in any proceeds from the Williams, Sr.'s songs or their renewal rights. In reaching this conclusion, it relied on *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (holding that courts must look to state law to determine child's legal status for inheritance before evaluating the child's renewal rights under the Copyright Act).

After the disruptive first few years of her life, Ms. Stone appears to have enjoyed an ordinary childhood, and developed a closely bonded relationship with the Deuprees, with no knowledge of her natural parents. Then, in late 1973, shortly before appellant's 21st birthday, Mrs. Deupree told her of the rumors regarding the identity of her natural father, but added that everything had been decided against her. This disclosure was necessary because, upon turning age 21, Ms. Stone was entitled to a small inheritance from Williams, Sr.'s mother, Lillian Stone. The Deuprees were concerned that appellant might encounter reporters while claiming the inheritance and wanted to arm her with knowledge. After picking up the inheritance check (about \$3,800) at the Mobile County Courthouse, Ms. Stone went to a library and read a biography on Williams, Sr., entitled *Sing a Sad Song*, written by Roger Williams. This book mentioned the possibility that Williams, Sr. had fathered an illegitimate daughter, and the author speculated on the child's entitlement to a renewal interest in his songs. Ms. Stone surmised that she might be that daughter.

In the following years, appellant asked the Deuprees about her background and talked to some attorney acquaintances, but did little else to ascertain her connection to Williams. She recalls that the Deuprees told her that there was nothing more to do. In 1979, she met with personnel from the state agency responsible for adoptions – the Alabama Department of Pensions and Securities – but states that she no longer remembers the substance of the conversation. The record, including appellant's deposition, suggests that her feelings about Williams' parentage were ambivalent.

Her attitude crystallized in 1980 when she received a telephone call from her adoptive father, George Deupree. Evidently alluding to his decision not to pursue Ms. Stone's rights in the 1967-68 lawsuits, Deupree told her that he had undergone a change of heart after seeing Hank Williams, Jr. on a television show. Deupree has since died, but appellant related the conversation in her deposition: "I want to ask you if you would like to find out if Hank Williams is your father. He said think about it. And he said I will help you in any way that I can. And he said I think I was wrong in withholding information from you and not discussing it. And I will do everything I can to help you."

Following this call, Ms. Stone stepped up her efforts to learn about her relationship to Williams, Sr. she looked up newspaper articles about him, and sought out his relatives and those of her natural mother, Bobbie Jett, who had also since died. She met with attorney Hamilton, her former guardian *ad litem*, and discussed with him the 1952 custody and support agreement between Bobbie Jett and Williams, Sr., and obtained the records from the 1967

and 1968 Circuit Court proceedings. But Ms. Stone did not examine those documents until after she met attorney Keith Adkinson (who later became her husband) in 1984.

Appellant filed the original declaratory judgment complaint in this action on September 12, 1985 which, as amended to include all of the above-named defendants, contains two claims. The first claim against all the defendants arises under the Copyright Acts of 1909 and 1976 and seeks a number of declarations, including that Ms. Stone is the natural daughter of Williams, Sr., and as such is entitled to a proportionate share of the renewal rights from his songs. The second claim alleges that certain of the defendants committed a conspiracy to defraud her.

In addition to this federal action, Hank Williams, Jr. and Ms. Stone sued each other in Alabama state court in 1985, each seeking a declaratory judgment on appellant's status vis-a-vis Hank Williams, Sr. That court held that even though Ms. Stone was the natural child of Williams, Sr., she was not his heir under Alabama law. Thus, it gave preclusive effect to the prior 1967 and 1968 Alabama Circuit Court state ruling.

Appellant and defendants moved for summary judgment in the instant action on a number of grounds including statute of limitations and res judicata. The district court, in granting defendants' motion for summary judgment and dismissing her complaint, relied on the doctrine of laches and did not reach the other issues.

## II DISCUSSION

Historically laches developed as an equitable defense based on the latin maxim *vigilantibus non dormientibus*



*aequitas subvenit* (equity aids the vigilant, not those who sleep on their rights). See *Independent Bankers Ass'n of America v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam). In contrast to a statute of limitations that provides a time bar within which suit must be instituted, laches asks whether the plaintiff in asserting her rights was guilty of unreasonable delay that prejudiced the defendants. See, e.g., *Gardner v. Panama Railroad Co.*, 342 U.S. 29, 31 (1951); *Lottie Joplin Thomas Trust v. Crown Publishers, Inc.*, 592 F.2d 651, 655 (2d Cir. 1978). The answers to these questions are to be drawn from the equitable circumstances peculiar to each case.

A ruling on the applicability of laches is overturned only when it can be said to constitute an abuse of discretion. See *Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Gardner v. Panama Railroad Co.*, 342 U.S. 29, 30 (1951); *Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 82 (2d Cir. 1981) (per curiam). Because this is an appeal from a motion for summary judgment that dismissed appellant's complaint, we construe the record in the light most favorable to appellant. We therefore presume the correctness of the 1985 holding of the State Court of Alabama that Cathy Stone is the natural daughter of Hank Williams, Sr. See *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam) (inferences must be drawn in favor of non-moving party).

We must analyze the reasonableness of delay and the resulting prejudice, see, e.g., *Czaplicki*, 351 U.S. at 533; *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980), to see whether there was a material issue of fact that should have been submitted to a jury. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

## A. Delay

Although laches promotes many of the same goals as a statute of limitations, the doctrine is more flexible and requires an assessment of the facts of each case – it is the reasonableness of the delay rather than the number of years that elapse which is the focus of inquiry. See *Gardner*, 342 U.S. at 31-32 (the matter should not be determined by reference to mechanical application of statute of limitations; equities of parties must be considered); *Holmberg v. Armbrrecht*, 327 U.S. 392, 396 (1946); *Wagg v. Herbert*, 215 U.S. 546, 553 (1910). In holding that Ms. Stone unreasonably delayed in bringing this action to have her rights declared, the district court focused on the years 1974-85, beginning with Mrs. Deupree's conversation with appellant regarding the inheritance, and ending with the filing of the complaint that initiated the instant case.

In our view, the delay for the period from 1974 to 1980 may well have been entirely excusable under the circumstances. First, her relationship with the Deuprees is by all indications the paradigm of a successful adoption. Thus, it is not surprising that loyalty and gratitude to Mr. and Mrs. Deupree, whom she considered her real parents, gave her pause at doing anything that might hurt their feelings. For this reason, George Deupree's telephone call to Ms. Stone is significant. Only after he called in 1980 could appellant be sure that investigating her natural parentage would not damage the only family bonds she knew. Second, Ms. Stone's embarrassment at asserting her relationship to Williams, Sr. is also understandable, because his notoriety would have made publicity almost impossible for her to avoid. This is

substantiated by the extensive press coverage of the 1967 and 1968 court proceedings.

Third, only in recent years have courts and the general public come to recognize that children born of unmarried parents should not be penalized by being accorded a status for which they are not to blame. In the 1967 and 1968 proceedings, attorney Hamilton argued on Ms. Stone's behalf that discriminating against illegitimate children violated the Federal Constitution. Unfortunately for appellant, Hamilton was before his time; the case that would remove much of the stigma associated with illegitimacy was then pending before the Supreme Court, but not decided until after appellant's rights had been adjudicated. See *Levy v. Louisiana*, 391 U.S. 68, 72 (1968) (holding unconstitutional state statute that discriminated against illegitimates to discourage births out of wedlock).

But even though Ms. Stone might arguably be excused for the reasons just stated from filing suit until 1980, there is simply no plausible explanation for her delay in filing the instant complaint until September 1985, after five more years had passed. Appellant's filial loyalty is admirable, and one can sympathize with her feelings of embarrassment and trepidation attendant upon widespread personal publicity. But these reasons for delay cannot last forever for purposes of laches. A point arrives when a plaintiff must either assert her rights or lose them. Here Ms. Stone's procrastination and delay, which silently allowed time to slip away, remain as the only reason for her failure [sic] bring suit earlier.

Where plaintiff has not slept on her rights, but has been prevented from asserting them based, for example,

on justified ignorance of the facts constituting a cause of action, personal disability, or because of ongoing settlement negotiations, the delay is reasonable and the equitable defense of laches will not bar an action. See Note, *Laches in Federal Substantive Law: Relation to Statutes of Limitation*, 56 B. U. L. Rev. 940, 972 (1976). There is no such reasonable excuse, or any issue of fact presented in the instant case that would permit a jury to excuse appellant's delay for the five years beginning in 1980 and ending in September 1985.

#### B. Prejudice

Laches is not imposed as a bar to suit simply because a plaintiff's delay is found unexcused; it must also be determined whether the defendants have been prejudiced as a result of that delay. See *Saratoga Vichy Spring Co.*, 625 F.2d at 1040. Although an evaluation of prejudice is another subject of focus in laches analysis, it is integrally related to the inquiry regarding delay. Where there is no excuse for delay, as here, defendants need show little prejudice; a weak excuse for delay may, on the other hand, suffice to defeat a laches defense if no prejudice has been shown. See *Larios v. Victory Carriers, Inc.*, 316 F.2d 63, 67 (2d Cir. 1963). Defendants may be prejudiced in several different ways. See *Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 844 (D.C. Cir. 1982). One form of prejudice is the decreased ability of the defendants to vindicate themselves that results from the death of witnesses or on account of fading memories or stale evidence. Another type of prejudice operates on the principle that it would be inequitable in light of some change in defendant's position to permit plaintiff's claim

to be enforced *See Holmberg*, 327 U.S. at 396. Defendants here were prejudiced in both ways.

As the district court noted, some of the key people having knowledge of the events preceding Ms. Stone's birth have died since 1974 – George Deupree, Bobbie Jett and Billie Jean Williams Berlin [sic]. All of their deaths are not equally prejudicial. For example, Bobbie Jett died in 1974, so absence of her testimony cannot be found to prejudice defendants because she would not have been alive to testify even if appellant had filed suit immediately. Nevertheless, the circumstances giving rise to this appeal have already spanned over two decades and the additional five years of Ms. Stone's unexcused delay doubtless would hamper the defense further – appellant's deposition reveals that even her memory has faded significantly in the interim. *See Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 83 (2d Cir. 1981). We conclude that the defendants were prejudiced to some degree by evidence that was lost by death or weakened during the delay. Because the defendants were injured in other ways by the delay, we need not hold that a finding of this kind ~~of~~ prejudice is alone sufficient to support the laches defense.

Prejudice may also be found if, during the period of delay, the circumstances or relationships between the parties have changed so that it would be unfair to let the suit go forward. The defendants have entered into numerous transactions involving Williams, Sr.'s songs. Ms. Stone responds that these transactions need not be unravelled – she could simply share in the profits. But that argument ignores the fact that the transactions were premised on the apparent certainty of the ownership of the songs' renewal rights – attributable to appellant's delay. This

procrastination prejudiced defendants by lulling them into a false sense of security that the renewal rights were as they appeared and that she would not contest the 1967 and 1968 court ruling. See *Independent Bankers Ass'n of America v. Heimann*, 627 F.2d at 488 (D.C.Cir. 1980); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

We cannot be sure that defendants' [sic] would have struck the bargains they did had they anticipated the diminution in their profits that Ms. Stone seeks. This result is logically not altered by whether the defendants made actual expenditures or whether they simply incurred the opportunity costs implicated in foregoing other ventures. As Judge Learned Hand wrote as a district court judge in a copyright case in which the plaintiff delayed for 16 years before filing suit, it would be unfair for a plaintiff "to stand inactive while the proposed infringer spends large sums of money in its exploitation, and to intervene only when his speculation has proved a success. Delay under such circumstances allows the owner to speculate without risk with the other's money; he cannot possibly lose, and he may win." *Haas v. Leo Feist, Inc.*, 234 F. 105, 108 (S.D.N.Y. 1916); see also *Independent Bankers*, 627 F.2d at 488. We therefore agree with the district court that the change in relationships and circumstances that occurred while Ms. Stone delayed would prejudice the defendants if the case were allowed to proceed at this late date.

Finally, we note that the underlying value of the laches doctrine, as with statutes of limitations, is that of repose. Even assuming that appellant's claims are meritorious, the availability of the laches defense represents a

conclusion that the societal interest in a correct decision can be outweighed by the disruption its tardy filing would cause. Thus, courts, parties and witnesses "ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." See *Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 428 (1965).

### III CONCLUSION

We hold therefore that Ms. Stone's delay in filing suit until September 1985 was unexcused and has prejudiced defendants. Accordingly, the order of the district court is affirmed.

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## APPENDIX J-3

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUITCATHY YVONNE )  
STONE )

88-7860

v )

## NOTICE OF MOTION

(filed Aug. 1, 1989)

HANK WILLIAMS, )  
JR., et al. )*state type of motion**Use short title* )for RECALL OF MANDATE  
AND ORDER GRANTING  
LEAVE TO FILE PETITION  
FOR REHEARING AND  
REMAINING IN BANCMOTION BY: (Name, address and tel. no. of law firm and of  
attorney in charge of case)

MILTON A. RUDIN, ESQ.\*

RUDIN and APPEL, a Professional  
Corporation

9601 Wilshire Boulevard, Suite 800

Beverly Hills, California 90210

(213) 274-4844

Has consent of opposing counsel:

A. been sought?

[ ] Yes [X] No

B. been obtained?

[ ] Yes [X] No

Has service been effected?

[X] Yes [ ] No

Is oral argument desired?

[ ] Yes [X] No

*(Substantive motions only)*

Requested return date:

*(See Second Circuit Rule 27(b))*

Has argument date of appeal been set:

A. by scheduling order?

[X] Yes [ ] No



B. by firm date of argument  
notice?

☒ Yes ☐ No

C. If Yes, enter date: February 1, 1989, Decision;  
Judge or agency whose order is being appealed: April 21,  
1989

Honorable John F. Keenan, S.D.N.Y.

OPPOSING COUNSEL: *(Name, address and tel. no of law  
firm and of attorney in charge of  
case)*

ALAN L. SHULMAN, ESQ. \*\*  
Silverman, Shulman & Slotnick, P.C.  
136 East 57th Street  
New York, New York 10022  
(212) 758-2020

**EMERGENCY MOTIONS, MOTIONS FOR STAYS &  
INJUNCTIONS PENDING APPEAL**

Has request for relief been made below? ☐ Yes ☐ No

*(See F.R.A.P. Rule 8)*

Would expedited appeal eliminate  
need for this motion?

☐ Yes ☐ No

If No, explain why not:

Will the parties agree to maintain the  
status quo until the motion is heard? ☐ Yes ☐ No

\* Coblenz, Warner, Hamilton & Smith  
1370 Avenue of the Americas  
New York, N.Y. 10019 (212) 957-9700

---

Brief statement of the relief requested:

Appellant requests that the mandate of this Court issued  
on June 5, 1989, be recalled in order that Appellant be  
permitted to file a Petition for Rehearing and Rehearing

In Banc, and that said Petition be ordered filed within fourteen (14) days after this Motion is granted.

Complete Page 2 of This Form

By: (*Signature of attorney*) Appearing for: (*Name of party*)

/s/ Milton A. Rudin

Cathy Yvonne Stone

Appellant or Petitioner:  
☒ Plaintiff

Signed name must be  
printed beneath

Date

Milton A. Rudin

July 31, 1989

\_\_\_\_ ORDER \_\_\_\_

*Kindly leave this space blank*

IT IS HEREBY ORDERED that the motion be and it hereby is granted and the mandate of this Court issued June 5, 1989 is recalled. Appellant should file a brief not to exceed 10 pages within 14 days of the date of this order and the appellee may file an opposing brief not to exceed 10 pages within 7 days thereafter. The issue to be briefed should be confined to the issue of how the Alabama Court's finding of fraud affects our determination regarding Stone's laches.

No oral argument is granted.

Ellsworth Van Graafeiland  
Richard J. Cardamone  
Lawrence W. Pierce  
Circuit Judge

\_\_\_\_\_  
Date

J-3.4

\*\* Lawrence I. Fox, Esq.  
Berger, Steingut, Weiner, Fox & Stern  
600 Madison Avenue  
New York, New York 10022  
(212) 980-1400

Thomas R. Levy Esq.  
300 East 42nd Street 9th Floor  
New York, New York 10017  
(212) 682-6110

(filed Aug 24, 1989)

---

APPENDIX J-4

SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, D.C. 20543

November 6, 1989

Mr. Lawrence I. Fox  
Berger & Steingut  
600 Madison Avenue  
New York, NY 10022

Re: Cathy Yvonne Stone,  
v. Hank Williams, Jr., et al.  
No. 89-295

Dear Mr. Fox:

The Court today entered the following order in the above entitled case:

The motion of petitioner to defer consideration of the petition for certiorari is denied. The petition for a writ of certiorari is denied.

Very truly yours,  
Joseph F. Spaniel, Jr., Clerk

---

APPENDIX J-5

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

OPINION ON PETITION  
FOR REHEARING

---

No. 732 - August Term 1988  
(Argued February 1, 1989  
Decided April 21, 1989)  
(Petition for Rehearing Filed  
September 7, 1989  
Decided Dec. 5, 1989)  
Docket No. 88-7860

---

CATHY YVONNE STONE, an Individual,

*Plaintiff-Appellant,*

v.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., a Delaware Corporation, ABERBACH ENTERPRISES, LTD., a New York Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE AND ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

*Defendants-Appellees.*

---

Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE,  
*Circuit Judges*

---

Petition for rehearing under Fed. R. App. P. 40 made by Cathy Yvonne Stone of this panel's decision in *Stone v. Williams*, 873 F.2d 620 (2d Cir.), *cert. denied*, 58 U.S.L.W. 3301 (U.S. Nov. 7, 1989) (No. 89-295), that affirmed the grant of summary judgment dismissing appellant's complaint on the grounds of laches in the United States District Court for the Southern District of New York (Keenan, J.).

Petition for rehearing granted. Prior opinion vacated and case remanded to the district court.

---

MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Rudin & Appel, Beverly Hills, California; Kenneth E. Warner, Coblenz Warner Hamilton & Smith, New York, New York, of counsel), *filed a brief for Plaintiff-Appellant*.

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, of counsel), *filed a brief for Defendants-Appellees, Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.*

THOMAS R. LEVY, New York, New York, *filed a brief for Defendants-Appellees, Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.*

LAWRENCE I. FOX, New York, New York, (Stephen K. Rush, Dianna Baker Shew, Berger & Steingut, of counsel), *filed a brief for Defendants-Appellees, Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music Inc.*

---

CARDAMONE, *Circuit Judge*:

Pursuant to an order entered August 24, 1989, granting her leave to file a petition for rehearing, Cathy Yvonne Stone petitions this panel under Fed. R. App. P. 40 for a rehearing. She had appealed from a judgment of the United States District Court for the Southern District of New York (Keenan, J.) granting summary judgment to defendant in an action plaintiff brought seeking her purported share of copyright renewal rights to songs composed by Hank Williams, Sr., her natural father. Defendants are the son and common-law wife of the late singer, and several individuals and corporations that are assignees of the copyrights to Hank Williams' songs. Judge Keenan ruled that plaintiff's claim was barred by laches. We affirm the district court in an opinion dated April 21, 1989, *Stone v. Williams*, 873 F.2d 620 (2d Cir.), cert. denied, 58 U.S.L.W. 3301 (U.S. Nov. 7, 1989) (No. 89-295).

The petition for rehearing of the appeal is granted. The April 21st opinion and judgment of this Court are vacated, and the matter is remanded to the district court for further proceedings.

I

At the time of plaintiff's appeal before us, she also had pending an appeal to the Supreme Court of Alabama where she sought to have her father's estate opened and to obtain her proportionate share of that estate. The defendants on that appeal included Irene Smith (Hank Williams' sister and the administratrix of his estate at the time plaintiff's claim to the estate was originally decided)

and Robert Stewart (Williams' attorney). In order to achieve that ultimate relief, Ms. Stone necessarily also petitioned the Alabama Supreme Court to set aside two orders entered in 1967 and 1968 by the Montgomery Circuit Court which, though acknowledging that Hank Williams was her natural father, declared that she was not an heir to his estate.

On July 5, 1989, the Supreme Court of Alabama reversed the trial court's award of summary judgment to defendants finding that they had intentionally, willfully and fraudulently concealed plaintiff's identity, existence, claim and rights as a natural child of Hank Williams, Sr. The court determined that defendants' fraud, along with other errors of law, presented sufficient grounds to set aside the 1967 and 1968 decrees that declared that plaintiff was not an heir to Williams' estate. This fraud, the court continued, excused plaintiff's delay in asserting her claim, and it held therefore that plaintiff had asserted her rights timely. It further found substantial evidence in the record that could indicate to a factfinder that defendants fraudulently conspired to keep certain facts relating to plaintiff's existence, identity and potential claim concealed from the courts of Alabama.

#### A.

A brief review of some of the factual background is necessary to understand the present posture of the matter now before us. When the famous country and western singer Hank Williams died (a few days before plaintiff was born) his mother, Lillian Stone, legally adopted



plaintiff. Hank Williams's sister, Irene Smith, had promised to care for plaintiff in the event that Lillian Stone was unable to. After Lillian Stone's death, Smith reneged on her promise, saying she wanted to avoid the "publicity and gossip" associated with the baby, and that it would be in the child's best interests to be put up anonymously for adoption. But a letter written earlier by Smith to attorney Stewart in 1954 suggests that Smith may have been motivated by more selfish reasons. Pertinent parts of that letter state:

The idea you have about making Billy [Hank Williams' reputed widow] a legal wife isn't bad at all but I fear that once you accept her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.

\* \* \*

Thanks for sending the royalties check. It sure came in handy. . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. . . . Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. . . .

Additional correspondence between attorney Stewart and legal counsel for Wesley Rose, one of the copyright assignees, reveals Stewart's early knowledge of plaintiff's claim to the copyright renewals. Relevant language in a letter from Rose's counsel to Stewart, dated February 28, 1962 stated:

There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals. . . .

Stewart's letter in response, dated July 5, 1962, noted:

Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, we may be faced with a difficult problem, and certainly one we would not want to litigate. . . .

Stewart then listed several alternative ways that plaintiff's rights to the renewals might be cut off.

In 1967 Audrey Williams, Hank Williams' former wife (now deceased), petitioned for final settlement of the estate on behalf of her son Hank Williams, Jr. Attorney Stewart was called to testify by a guardian ad litem representing plaintiff. Although he produced a child support and custody agreement executed by Williams - which provided that plaintiff would be cared for by Williams - he did not divulge to the court information he had respecting other matters relating to plaintiff's claim to an interest in her father's estate.

In 1967 and 1968 the Montgomery County Circuit Court accordingly ruled that plaintiff was not an heir to

Williams' estate. Despite this ruling, when in 1969 Stewart became administrator of Williams' estate (succeeding defendant Smith), he began setting aside a share of the estate for plaintiff's benefit. At one time he wrote to Williams, Jr.'s attorney: "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." When Williams' estate was closed in August 1975, the portion set aside for plaintiff was distributed along with the other estate assets.

B.

Based upon this evidence the Supreme Court of Alabama concluded there was sufficient evidence of fraud perpetrated against Cathy Stone to make disposition of her case by summary judgment on that issue inappropriate. The court also examined whether plaintiff's claim should be barred by laches, and ruled that plaintiff's delay was excusable. The Alabama Supreme Court reasoned that she was permanently removed at age three from the city of her birth to another city for the express purpose of making it highly unlikely that she would discover her father's identity; all public records that might have revealed her paternity were ordered sealed; plaintiff had no idea of her relationship to Williams until 1974, and even then when the matter was first presented to her it was presented as mere speculation; the findings of the Alabama trial court in 1967 and 1968 (declaring that plaintiff was not an heir) were tainted by intentional fraud on the part of the administratrix and attorney of Williams' estate; and finally, plaintiff made prompt demand for her share of her father's estate as soon as she

received the sealed records containing firm evidence of her paternity.

## II

Although not bound by the decision of the Alabama Supreme Court – its decision involved different parties and applicable law – we believe that its finding of fraud requires a reappraisal of our decision made before that court ruled. Cf. *Bott v. Four Star Corp.*, 807 F.2d 1567, 1576 (Fed. Cir. 1986) (defendant's egregious conduct may defeat its laches defense); *Johanna Farms, Inc. v. Citrus Bowl, Inc.*, 468 F. Supp. 866, 874 (E.D.N.Y. 1978) ("one who seeks Equity's assistance must stand before the court with clean hands"). More particularly, the finding of fraud warrants a reassessment of the prejudice to defendants that may result should we permit plaintiff's claim to proceed on the merits. See, e.g., *Czaplicki v. the Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980). We recognize that the principal defendants in the action before us are Hank Williams, Jr. and Billie Jean Williams Berlin, Hank Williams, Sr.'s common-law wife, not the administratrix and attorney of Williams' estate, as in the Alabama action. However, recited evidence in the Alabama court makes clear that the present defendants were aware of plaintiff's rights to the copyright renewals long before plaintiff. Irene Smith, who was instrumental in concealing from plaintiff evidence of who her father was, acted as Hank Williams, Jr.'s guardian during the 1967-68 proceedings. Similarly, Smith, as administratrix, and Stewart, as attorney, of Hank Williams' estate, conspired to conceal from Cathy Stone her potential rights, and took pains to cut off

those rights. These actions of his guardian benefited Hank Williams, Jr. Hank Williams, Jr.'s counsel was further advised by Stewart that a portion of the estate income was being withheld for appellant. Williams, Jr. never disavowed Stewart's actions, or mentioned any of these facts in prior court proceedings in Alabama in 1985 or in the district court proceeding we earlier reviewed and to which he and plaintiff were parties.

The prejudice to defendants we identified in our prior opinion, 873 F.2d at 625, would not have existed but for the failure of the present defendants to reveal the facts of which they had knowledge. Defendants could have sought a court declaration of their rights vis-a-vis plaintiff. Instead they chose to remain silent. They should not now be allowed to claim that they are prejudiced by plaintiff's present assertion of her rights when they were aware of them all along.

Consequently, in reassessing the equitable circumstances peculiar to this case, the equities fall on plaintiff's side. The present litigation is a contest, after all, between Hank Williams' heirs over copyright renewal rights. To allow defendants to bar plaintiff from claiming her rights when the availability of the laches defense was obtained by them in such an unworthy manner would not only grant defendants a windfall in this suit to which they are not entitled, but would also encourage a party to deliberately mislead a court. Courts of equity exist to relieve a party from the defense of laches under such circumstances. See *Holmberg v. Armbrrecht*, 327 U.S. 392, 396-97 (1946).

Consequently, the evidence of fraud, which the Alabama Supreme Court found persuasive, makes summary judgment dismissing plaintiff's claim on the grounds of laches inappropriate. The figure representing justice is blindfolded so that the scales are held even, but justice is not blind to reality. Plaintiff therefore should have her day in court and an opportunity to have a jury determine the merits of her claim.

### III

Plaintiff also requests a rehearing *en banc*. She claims an *en banc* hearing is merited because the dismissal of her claim on the ground of laches contradicts copyright law established by the Supreme Court in *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960) and *Menendez v. Holt*, 128 U.S. 514 (1888), and by us in *New Era Publications International v. Henry Holt & Co.*, 873 F.2d 576 (2d Cir. 1989). Since the dismissal of the case on laches grounds which this panel originally affirmed is now reversed, we need not decide this question.

### IV

The petition for rehearing is granted. The previous opinion of this Court of April 21, 1989, *Stone v. Williams*, 873 F.2d 620 (2d Cir. 1989), is vacated, and replaced by the present opinion which now reverses the dismissal of plaintiff's complaint by the district court on the ground of laches. The matter is remanded to the district court for further proceedings on the merits.

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## APPENDIX J-6

### STATEMENT OF RELATED PROCEEDINGS

In addition to the instant action there is currently pending before the United States District Court for the Southern District of New York an action styled *Cathy Yvonne Stone v. Hank Williams, Jr., et al.*, 85 Civ. 7133 (JFK), which was filed by Respondent two (2) days after the instant action on September 12, 1985. In *Stone v. Williams* Respondent is seeking (a) a declaratory judgment that she is the natural daughter of Hank Sr. and the owner of a proportionate interest in the renewal term of copyright in musical compositions written by Hank Sr. and (b) damages and exemplary damages against certain defendants other than Hank Jr. for conspiracy to defraud and a breach of fiduciary duty. Although alleged against other parties, the second claim for relief is based upon the same facts which form the basis for the third party action in the instant case.

Hank Jr. and the other defendants in *Stone v. Williams* submitted a joint Motion for Summary Judgment which was granted by the District Court. Respondent's claims were dismissed by the District Court in their entirety based upon the doctrine of laches.

Respondent perfected an appeal of the District Court's decision to the United States Court of Appeals for the Second Circuit. Pursuant to an Opinion dated April 21, 1989, the Second Circuit affirmed the judgment of the District Court.

Respondent submitted a Petition for Rehearing to the Second Circuit which was denied. Following the issuance of the Alabama Supreme Court's Opinion of July 5, 1989

and based thereon, Respondent filed a Motion for Recall of Mandate and Order Granting Leave to File Petition for Rehearing and Rehearing in Banc. The motion was granted. Subsequent to her submission of the second Petition for Rehearing, this Court denied Respondent's previously submitted Petition for Writ of Certiorari with respect to the Court of Appeals April 21, 1989 decision.

On December 5, 1989, the Second Circuit vacated its prior opinion and reversed the District Court stating that the Alabama Supreme Court decision caused it to "reappraise" its decision. Without regard for the findings of fact of the District Court (which had all of the evidence cited by the Alabama Supreme Court before it), the Second Circuit adopted the "facts" found by the Alabama Supreme Court to justify the vacating of its prior decision.

Hank Jr. and the other defendants in *Stone v. Williams* are submitting a Petition for Writ of Certiorari seeking review by this Court of the December 5, 1989 opinion of the Court of Appeals.

---



## APPENDIX K-1

*Estate of Rudder*, 78 Ill.App.3d 517, 397 N.E.2d 556 (1979). This case involved a closed estate. The narrow decision was that neither *Trimble* nor an amended state Probate Act should be applied retroactively to a closed estate. The court cited *Chevron* and purported to apply its retroactivity tests. However, the court also cited approvingly several other state court decisions that had applied tests like that later invalidated in *Reed*.

*Herndon v. Herndon*, 388 So.2d 463 (La. App. 1980). This apparently was a collateral attack involving a closed estate. The court held, as an alternative basis for its decision, that a state appellate decision holding Louisiana's intestacy laws unconstitutional under *Trimble*, even if affirmed by the state supreme court, would not be applied retroactively.

*Frakes v. Hunt*, 226 Ark. 171, 583 S.W.2d 497, cert. denied, 444 U.S. 942 (1979). This case involved an attack on the estate of a decedent who had died five years before *Trimble*, but whose estate had never been administered. Without citing any of this Court's retroactivity decisions, the court held broadly that *Trimble* would not be applied retroactively. The dissent argued in favor of retroactive application, partly on the basis of the tests set forth in *Linkletter v. Walker*, 381 U.S. 618 (1965), partly based on the fact that the estate had not been administered, and partly on the basis of a presumption that this Court's decisions should be applied retroactively unless this Court has directed otherwise.

*Marshall v. Marshall*, 670 S.W.2d 213 (Tenn. 1984). It is unclear whether this case involved an open or a closed estate. The decision held, based on the reasoning of

secondary authorities that discussed this Court's retroactivity decisions, that the principles of *Trimble* would be applied retroactively unless the heirs who acquired assets of the estate under prior law had relied to their detriment on such prior law. By stressing reliance, *Marshall* seems to apply a case-by-case test that ignores the interest in finality of probate orders.

*Paschall v. Smiley*, 530 S.W.2d 18 (Miss. 1988). This case involved an attack on a closed estate, pursuant to a state statute that permitted such actions, subject to stringent procedural and other safeguards. The decision reversed a lower court decision holding that the statute unconstitutionally divested rights of heirs as determined under pre-*Trimble* law, on the ground that the lower court had reached the constitutional issue prematurely.

*Henson v. Jarman*, 758 S.W.2d 368 (Tex. Civ. App. 1988). This decision followed *Reed* under analogous facts. Without engaging in any retroactivity analysis, the court stated in *dicta* that new law would not be applied retroactively in cases involving closed estates.

*Pendleton v. Pendleton*, 560 S.W.2d 538 (Ky. 1978) (on remand for reconsideration in light of *Trimble*). This decision withdrew the Kentucky Supreme Court's prior mandate, and held that *Trimble* would be applied retroactively to cases in which the constitutional questions were being litigated on the date *Trimble* was decided, but not otherwise. The decision cited no retroactivity decisions of this Court, and ignored the fact that the case arose as a collateral attack on a closed estate. The time of filing test established by this decision is no longer valid in light of *Reed*. The fact that a decision on direct remand from this

Court reached a result that this Court later invalidated suggests that lower courts desperately need clear guidance on retroactivity issues.

*Rekowski v. Cucca*, 542 A.2d 664 (R.I. 1988). This case followed *Reed* in holding that a new law would be applied in an action involving an open estate. It did not discuss retroactivity decisions of this Court, but it implied that the result would have been different if the estate had been closed.

*Powers v. Wilkinson*, 399 Mass. 650, 506 N.E.2d 842 (Mass. 1987). In this analogous case the highest court in Massachusetts reversed a prior state law rule of construction by holding that, in the absence of a contrary expression of intent, the term "issue" in a trust instrument would be deemed to include illegitimates. Citing the reliance by grantors of trusts and their attorneys on the prior rule of construction, the court held that the new rule would be applied only to trusts executed after the date the decision was rendered.

*Kirchberg v. Feenstra*, 609 F.2d 727 (5th Cir. 1979), *aff'd*, 450 U.S. 455 (1981). In this case, which involved gender discrimination, the court held invalid a mortgage that had been executed by the husband under a state law allowing the husband, but not the wife, to encumber community property without joinder of the other spouse. Citing *Chevron* and other retroactivity decisions of this Court, the Fifth Circuit held that the decision would not affect mortgages executed before the date the decision was rendered. On appeal, this Court affirmed, without

addressing the retroactivity issue. Two Justices, concurring, stressed the non-retroactive nature of the decision. 450 U.S. at 463 (Rehnquist and Stewart, JJ, concurring).

While other lower courts have ignored or applied inconsistently the retroactivity tests of *Chevron*, Alabama's decisions best illustrate the confusion that prevails regarding retroactive application of new law. In *Cotten v. Terry*, 495 So. 2d 1077 (1986), that state's supreme court allowed an illegitimate to share in an estate, where the decedent had died eleven years before a collateral attack was filed, but where the estate had never been formally administered.

Relying in part on its own decision in *Cotten v. Terry*, the Alabama Supreme Court in the case at bar determined that it was bound to apply retroactively, to a long-closed estate, the principles established in *Trimble*. The court noted in passing the interests in finality of judgments and orderly disposition of estates, but made no effort to consider those interests in light of the other factors mandated under *Chevron*. Instead, the Alabama court limited relief, which it arbitrarily awarded from the date the instant claim was made. The case at bar thus highlights the uncertainty with which lower courts have approached retroactivity issues and the untoward consequences of that uncertainty in an area of the law in which this Court has acknowledged an important state interest.

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3  
No. 89-1538

Supreme Court, U.S.  
FILED

MAY 21 1990

JOSEPH E. SPANIOLO, JR.  
CLERK

In The  
Supreme Court of the United States  
October Term, 1989

RANDALL HANK WILLIAMS,  
*Petitioner,*  
v.

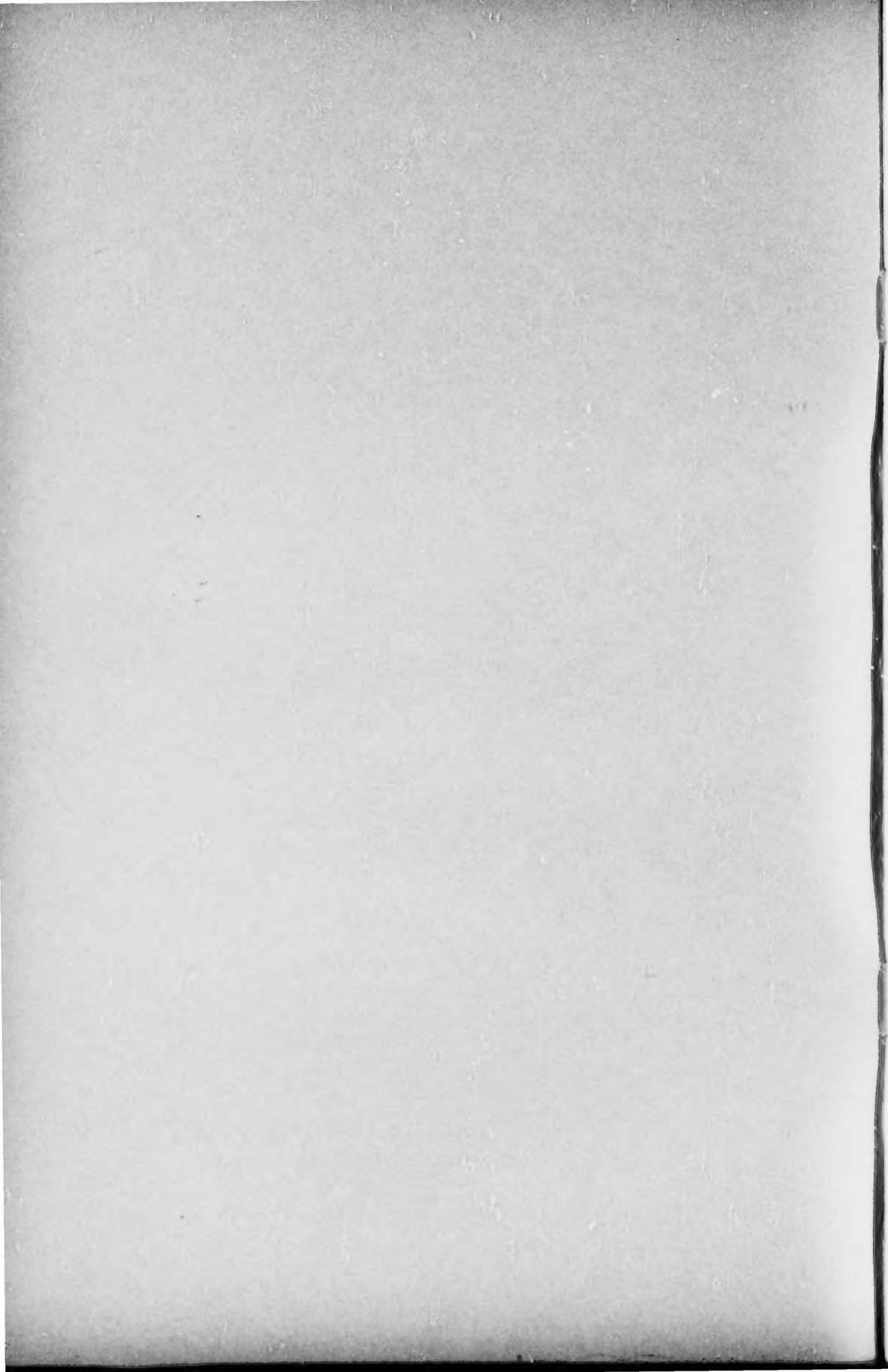
CATHERINE YVONNE STONE,  
*Respondent.*

On Petition For Writ Of Certiorari To  
The Supreme Court Of Alabama

RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

DAVID CROMWELL JOHNSON  
Counsel of Record  
JOHNSON AND CORY, P.C.  
300 21st Street North  
Birmingham, Alabama 35203  
205-328-1414

*Attorney for Respondent*



I. QUESTIONS PRESENTED

1. SHOULD THIS COURT REVIEW  
SUBSTANTIVE ISSUES AND FINDINGS OF FACT  
AND LAW BY THE ALABAMA SUPREME COURT,  
UPON THE PETITION OF A NON-PARTY TO  
THOSE PROCEEDINGS, WHO FAILED TO FILE A  
TIMELY MOTION TO INTERVENE AFTER NOTICE  
OF THE PROCEEDINGS AND THE ISSUES  
RAISED?
2. SHOULD THIS COURT REVIEW A CLAIM OF  
DUE PROCESS VIOLATION WHEN PETITIONER  
HAS FAILED TO RAISE THE CLAIM AT THE  
EARLIEST OPPORTUNITY IN THE STATE  
COURT, AFTER ACTUAL NOTICE OF THE  
PROCEEDINGS AFFECTING HIS RIGHTS?
3. SHOULD THIS COURT REVIEW THE  
ALABAMA SUPREME COURT'S DECISION IN  
LIGHT OF TRIMBLE, LALLI AND REED V.  
CAMPBELL WHEN THE ALABAMA DECISION IS  
NOT IN CONFLICT WITH THESE DECISIONS?

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IV. STATEMENT OF THE CASE

Statement of the Proceedings

Petitioner has always had actual knowledge that Respondent was attempting to reopen the Estate of Hiram Hank Williams (hereinafter referred to as "Williams Sr.") and was seeking her pro rata child's share of the Estate. The easiest and clearest way to show this to the Court is to review the filings in this case, and examine the certificates of service on each filing. In fact, examination of the pleadings reveals that from the very beginning Petitioner anticipated that Respondent would seek the relief she was ultimately awarded, and initiated the entire action by seeking a declaration to uphold the Decrees entered in the Estate of Williams Sr.

The action now before this Court was initiated on September 10, 1985, by Randall Hank Williams (hereinafter referred to as "Williams Jr.") and Wesley Rose and Fred Acuff as trustees in liquidation for the stockholders of Fred Rose Music Inc. and Milene Music, Inc., which corporations had acquired rights in the musical compositions of Williams Sr. The original complaint was amended on November 25, 1985 (App. F-1) and sought the following determinations:

- 1) Catherine Yvonne Stone (hereinafter referred to as "Stone") has never been adjudicated to be the child of Williams Sr.;
- 2) Stone is an adopted child and is therefore barred by §26-17-6(e) of the Code of Alabama (1984) from

establishing paternity to Williams Sr.;

3) Stone is barred by statute of limitations, laches, waiver and estoppel from establishing paternity to Williams Sr. in 1985;

4) Court orders entered in the Matter of the Estate of Hiram Hank Williams (Williams Sr.), Circuit Court of Montgomery County, Alabama, In Equity, Case No. 25,056 and the Matter of the Guardianship Estate of Randall Hank Williams, a minor, Circuit Court of Montgomery County, Alabama, in Equity, Case No. 27,960, are binding on Stone and bar her from establishing paternity in 1985;

5) Williams Jr. is the sole child of Williams Sr., and consequently,

the sole heir of Williams Sr.

Stone filed a counterclaim to the Williams Jr. declaratory judgment action. (App. F-2) She sought a judgment of paternity that she is a child of Williams Sr. and is due her proportionate interest in the proceeds of the estate of Williams Sr. She requested Williams Jr. to account for all monies he received from the Williams Sr. estate and requested the Court to impose a constructive trust on Williams Jr. for all monies received. A copy of this counterclaim was served upon counsel for Williams Jr.

On October 24, 1986, Stone filed a Third Party Complaint (App. F-3) against Irene Smith (the administratrix of the estate of Williams Sr. from 1955 to 1969), the Estate of Robert B.

Stewart (Robert Stewart having served as the attorney for the estate from 1953 until it was closed in 1975 and as the administrator of the estate from 1969 to 1975), Jones, Murray and Stewart (the law partnership of which Robert Stewart was a member), Gulf American Fire & Casualty Company (the insurance company which bonded the administrators of the estate), American States Insurance Company (successor in interest of Gulf American Fire & Casualty Company). As relief, Stone specifically demanded "that the estate of Williams Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void [and] that Stone be entitled to share her proportionate interest in all property and income of the estate." (App. F-3.16) A copy of the Third

Party Complaint was served upon counsel for Williams Jr. (App. F-3.18)

On November 17, 1986, Williams Jr. filed a Motion for Summary Judgment on the Amended Complaint and the Counterclaim. (App. F-4)

Honorable H. Mark Kennedy, Circuit Court of Montgomery County, Alabama, granted a Partial Summary Judgment for Williams Jr. on July 14, 1987. (App. B-1) In that Order, Judge Kennedy outlined the issues before him on summary judgment motion, and included:

"Whether, consistent with prior orders and judgments of this Court, Williams, Jr. is the sole heir of the Williams, Sr. estate and as such has exclusive rights to all proceeds generated in the past by the estate and in the future from copyrighted materials." (App. B-1.16)

The July 14, 1987 Order granted summary judgment for all defendants on all issues except the issue of whether

Stone is a child of Williams Sr. That issue was tried on September 2, 1987. (App. B-2)

Stone filed a Notice of Appeal from the July 14, 1987 Order granting summary judgment on the Third Party Complaint. A copy of the Notice of Appeal was served on counsel for Williams Jr. (Respondent's App. A-1.4)

On appeal, copies of all briefs were served upon counsel for Williams Jr. (App. G-2.35, 3.24, 4.17, 5.29, 6.13) On appeal, Stone continued to argue that a cause of action for fraud was stated and that she was entitled to a trial on her claims. Third party defendants conceded no argument, and continued to assert their defense that there was no fraud and no cause of action for fraud or any other mechanism to reopen the estate.

On July 5, 1989 the Supreme Court of Alabama issued its opinion. On July 19, 1989 Williams Jr. filed his Petition for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and For Stay of Issuance of Certificate of Judgment Pending Further Proceedings. (App. G-7) The Petition was considered and denied on November 9, 1989 by the Supreme Court of Alabama. (App. C-1)

#### V. REASONS FOR DENYING THE WRIT

A. THIS COURT SHOULD NOT REVIEW SUBSTANTIVE ISSUES AND FINDINGS OF FACT AND LAW BY THE ALABAMA SUPREME COURT UPON THE PETITION OF A NON-PARTY TO THOSE PROCEEDINGS, WHO FAILED TO FILE A TIMELY MOTION TO INTERVENE AFTER NOTICE OF THE PROCEEDINGS AND ISSUES RAISED.

The only issue which this Court can review at the request of Williams Jr. is whether the Alabama Supreme



Court abused its discretion when it denied his Petition for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings; and the Court's first inquiry should be directed to the timeliness of the application. National Association for the Advancement of Colored People v. New York, 413 U.S. 345, 365 (1973) (this is true whether the intervention claimed is of right or as permissive).

Alabama Rule of Civil Procedure 24 governs intervention in civil actions. It is substantially identical to Federal Rule of Civil Procedure 24, and states:

(a) Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to

intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

Stone refers to Williams Jr.'s Petition as a Petition to Intervene under Alabama Rule of Civil Procedure 24, although it is not clear that he was even asking to intervene. The Petition simply asks for permission to appear. If this is all he seeks, then he is not entitled to any review at all in this Court.

The Alabama courts have always

examined the amount of time between when the intervenor first became aware of the action and the filing of the application to intervene. Pruitt v. Marshall County Department of Pensions, 494 So.2d 439, 442 (Ala. Civ. App. 1986); Ex Parte Jefferson Cablevision Corporation, 281 Ala. 657, 207 So.2d 132 (1968); Pruett v. Ralston Purina Company, 273 Ala. 594, 143 So.2d 309 (1962). When the intervenor sits on his right to intervene and waits until he sees what the results are or until he sees that the result may be adverse to him, the Alabama courts have not tolerated intervention at the expense of prejudice to the other litigants.

In Randolph County v. Thompson, 502 So.2d 357, 365 (Ala. 1987), the Supreme Court of Alabama stated that when an intervenor does not file his

application until after judgment is entered, the courts should consider whether intervention prejudices the rights of the existing parties to the litigation and whether it substantially interferes with the orderly processes of the court.

Williams Jr. had notice of the Third Party Complaint from the day it was filed. The Complaint clearly seeks the reopening of the Estate of Williams Sr. and redistribution of the proceeds. (App. F-3.16) He was present at the arguments on the Motions for Summary Judgment. Although he was not a party to the appeal, he was served with a copy of the Notice of Appeal, and he was given copies of the briefs. He chose not to be a party to the complaint which had been pending for two years, until he received a copy of

the appellate decision. The arguments he makes to this Court could have been made at any time during those two years on an application to intervene as a matter of right.

Now, Stone's rights given her under the Alabama judgment are prejudiced by Williams Jr.'s petition to this Court from a judgment to which he was not a party. She had a right to rely on the judgment because Williams Jr. had consciously chosen not to become a party to the proceeding, and she should not have expected that he would attempt to exercise a right which he did not have by filing this Petition. She now must wait resolution of this Petition to enforce her judgment.

B. THIS COURT SHOULD NOT REVIEW A CLAIM OF DUE PROCESS VIOLATION WHEN PETITIONER HAS FAILED TO RAISE THE CLAIM AT THE EARLIEST OPPORTUNITY IN THE STATE COURT AFTER ACTUAL NOTICE OF THE COMPLAINT AFFECTING HIS RIGHTS.

The claim of due process violation by Williams Jr. could have been used as a grounds for intervention in the Third Party Complaint as early as October 24, 1986, the date of service of the complaint upon his counsel. (App. F-3.18) He was aware at that time that Stone was seeking the reopening of the estate and her proportionate share of the estate proceeds. (App. F-3.16) He was also aware on that date that he was not a named party to the action.

Williams Jr. in his Petition to this Court (Petition, p. 19-20) argues that the cornerstones of due process are notice and an opportunity to be heard. Mullane v. Central Hanover Bank

& Trust Co., 339 U.S. 306, 314 (1950)  
and Tulsa Professional Collection  
Services, Inc. v. Pope, 485 U.S. 478  
(1988). Quick analysis of these  
proceedings reveals that Williams Jr.  
has received all the process he is due.

He received a copy of the Third  
Party Complaint. If he read the  
complaint he would have found that  
Stone was seeking to reopen the estate  
and obtain her pro rate share of it,  
which necessarily would affect his  
share of the estate by half. Williams  
Jr. was provided with a copy of the  
notice of appeal, advising him that the  
claims raised in the Third Party  
Complaint were not closed. He received  
copies of all briefs which clearly show  
that Stone had not dismissed or  
abandoned any of her original claims.

He claims that he had no

opportunity to be heard by the Alabama Supreme Court. However, the record shows that he filed a Petition for Leave to Appear (containing the arguments presented to this Court), which the Alabama Court "carefully" and "closely" considered. (App. C-1.11, 1.12, 1.13) The Alabama Court found that "the position advanced by Williams, Jr., that Stone was not an "heir" was adequately presented by other parties on this appeal." (App. C-1.13) Directly and indirectly, he presented his arguments and had the opportunity to be heard by the Court. His due process rights have not been violated.

Williams Jr. gambled on the Alabama Supreme Court decision, hoping to win either way. If the Court had affirmed the judgment without his



intervention, he was saved the effort of briefing and arguing to the Court. If the Court reversed the judgment, he would have the freedom to make the arguments he now makes because he was not a party to the appeal and he was surprised that his rights have been affected. He has accused Stone of a calculated litigation strategy of filing only an appeal from the summary judgment on the Third Party Complaint, while he now attempts to justify his own litigation device. He has treated his rights rather cavalierly. Williams Jr. now seeks the Court's assistance to regain that which he voluntarily gave up.

C. THIS COURT SHOULD NOT REVIEW THE ALABAMA SUPREME COURT'S DECISION IN LIGHT OF TRIMBLE, LALLI , AND REED V. CAMPBELL BECAUSE THE ALABAMA DECISION IS NOT IN CONFLICT WITH THESE DECISIONS.

The Alabama Supreme Court very accurately described the development of the law with regard to the right of an illegitimate child to inherit through intestate succession. (App. A-1.40 to 1.50) It cited Trimble v. Gordon, 430 U.S. 762 (1977) and Lalli v. Lalli, 439 U.S. 259 (1978), and the resultant changes in Alabama law to make it conform with the constitutional requirements discussed by this Court. The Alabama Court then applied the law of inheritance as it existed in 1989, because

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it exists at

the time the appeal is heard. (App. A-1.51)

The Alabama Supreme Court did not reopen this estate by retroactively applying **Trimble** and **Lalli**. Instead, the Court expressly reopened the estate because of the fraud practiced by the administrators and attorneys. Once the estate was opened it simply applied existing, current and constitutional law.

Williams Jr. contends that this retroactive application of **Trimble** and **Lalli** is illegal and in conflict with decisions from this Court. One of the cases cited by him to support this contention is Reed v. Campbell, 476 U.S. 852 (1986). Stone contends that the Alabama decision is not in conflict

with, but instead, conforms with the Reed decision, which controls this decision.

In Reed the illegitimate's father died before Trimble was decided, but the claim of heirship was made after the Trimble decision. At that time, the estate was still open. This Court could find no reason why "these two facts, either separately or in combination, should have prevented the application of Trimble, and the allowance of appellant's claim." Reed, 476 U.S. at 856.

In the case at bar, Williams Sr. died well before the Trimble decision in 1977. The 1967 and 1968 orders were vacated and the estate was reopened because the Alabama Court found that the administrators and attorneys for

the estate had committed legal fraud on the court in concealing the existence and identity of an heir. Hence, at the time of the July 1989 Alabama decision applying Trimble to determine Stone's status, the estate was open. Under Reed, the Alabama Court was correct to apply Trimble and Lalli, and the Alabama decision of Everage. Although the Alabama Court did not cite Reed, their decision is in conformity with it.

There is no jurisdiction under Supreme Court Rule 17 to consider this issue on certiorari because there is no conflict between the state court decision and important questions of federal law as decided by this Court.

VI. CONCLUSION

This case presents extraordinary facts which may never coincide in history again. The Alabama Court noted "the unique character of the case" and took into consideration "these peculiar circumstances" in fashioning a remedy. (App. C-1.11). The issues presented by Williams Jr. are peculiar to these facts here and a decision based on these facts will provide no guideline to future litigants.

The petition for writ of certiorari should be denied.

Respectfully submitted,

DAVID CROMWELL JOHNSON  
Johnson and Cory, P.C.  
300 21st Street North  
Birmingham, Alabama 35203  
205-328-1414

Attorneys for Respondent  
Counsel of Record

-Resp. App. A-1.1-

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA  
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE, )  
 )  
Third Party Plaintiff, )  
 )  
VS. )  
 )  
GULF AMERICAN FIRE & CASUALTY )  
COMPANY; AMERICAN STATES )  
INSURANCE COMPANY; JONES, )  
MURRAY & STEWART, P.C.; IRENE )  
SMITH; THE ESTATE OF ROBERT B. )  
STEWART, etc., )  
 )  
Third Party Defendants. )

NOTICE OF APPEAL

Now comes the Third Party  
Plaintiff, Cathy Yvonne Stone, by and  
through her undersigned attorney and  
appeal to the Supreme Court of Alabama  
from an Order of the Circuit Court of  
Montgomery County, Alabama dated July  
14, 1987, and made final on October 22,  
1987, granting Third Party Defendants

Motion For Summary Judgment.

/s/ DAVID CROMWELL JOHNSON  
Attorney For Third Party  
Plaintiff  
300 North 21st Street  
Suite 900, Title Building  
Birmingham, Alabama 35203  
205-328-1414

CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 30th day of November, 1987.

/s/ DAVID CROMWELL JOHNSON



-Resp. App. A-1.2-

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA  
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE, )  
 )  
Third Party Plaintiff, )  
 )  
VS. )  
 )  
GULF AMERICAN FIRE & CASUALTY )  
COMPANY; AMERICAN STATES )  
INSURANCE COMPANY; JONES, )  
MURRAY & STEWART, P.C.; IRENE )  
SMITH; THE ESTATE OF ROBERT B. )  
STEWART, etc., )  
 )  
Third Party Defendants. )

SECURITY FOR COSTS

We hereby acknowledge ourselves  
security for costs of appeal. For the  
payment of all costs secured by this  
undertaking, we hereby waive our right  
to exemption as to personal property  
under the Constitution and laws of the  
State of Alabama.

/s/ DAVID CROMWELL JOHNSON  
Attorney For Third Party  
Plaintiff  
300 North 21st Street  
Suite 900, Title Building  
Birmingham, Alabama 35203  
205-328-1414

/s/ THOMAS W. BOWRON, II  
SECURITY

300 N. 21st Street, B'ham, AL  
Address

/s/ LEILA HIRAYAMA  
SECURITY

300 N. 21st Street, B'ham, AL  
Address

Filed and approved this  
date: \_\_\_\_\_

/s/ \_\_\_\_\_  
CIRCUIT CLERK

-Resp. App. A-1.3-

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA  
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE, )  
 )  
Third Party Plaintiff, )  
 )  
VS. )  
 )  
 )  
GULF AMERICAN FIRE & CASUALTY )  
COMPANY; AMERICAN STATES )  
INSURANCE COMPANY; JONES, )  
MURRAY & STEWART, P.C.; IRENE )  
SMITH; THE ESTATE OF ROBERT B. )  
STEWART, etc., )  
 )  
Third Party Defendants. )

DESIGNATION OF RECORD ON APPEAL

DESIGNATION OF CLERK'S RECORD:

Appellants respectfully requests  
the Clerk to include the record as set  
out in Rule 10(b) of the Alabama Rules  
of Appellate Procedure, including all  
pleadings, orders, motions, discovery,  
depositions, exhibits, briefs or other  
documents filed with the Clerk's office

in the above styled case.

DESIGNATION OF REPORTER'S TRANSCRIPT:

April 16, 1987, Oral Argument  
presented to the Court on Motion  
For Summary Judgment

/s/DAVID CROMWELL JOHNSON  
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Suite 900, Title Building  
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205-328-1414

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA  
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE, )  
 )  
 Third Party Plaintiff, )  
 )  
 VS. )

GULF AMERICAN FIRE & CASUALTY )  
COMPANY; AMERICAN STATES )  
INSURANCE COMPANY; JONES, )  
MURRAY & STEWART, P.C.; IRENE )  
SMITH; THE ESTATE OF ROBERT B.)  
STEWART, etc., )  
)  
)  
Third Party Defendants. )

CERTIFICATE OF FILING

I certify that I have this date  
filed with the Clerk of this trial  
court the original and eleven (11)  
copies of the foregoing Notice of  
Appeal along with a \$100 docket fee,  
and such other instruments as have been  
completed and included herein, for  
service by the Clerk of a true copy

thereof on each of the following:

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No. 89-1538

Supreme Court, U.S.  
**FILED**

JUN 8 1990

JOSEPH F. SPANIOL, JR.  
CLERK

In The  
**Supreme Court of the United States**  
October Term, 1989

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RANDALL HANK WILLIAMS,  
*Petitioner,*  
vs.

CATHERINE YVONNE STONE,  
*Respondent.*

---

On Petition For Writ Of Certiorari  
To The Supreme Court Of Alabama

---

REPLY BRIEF

---

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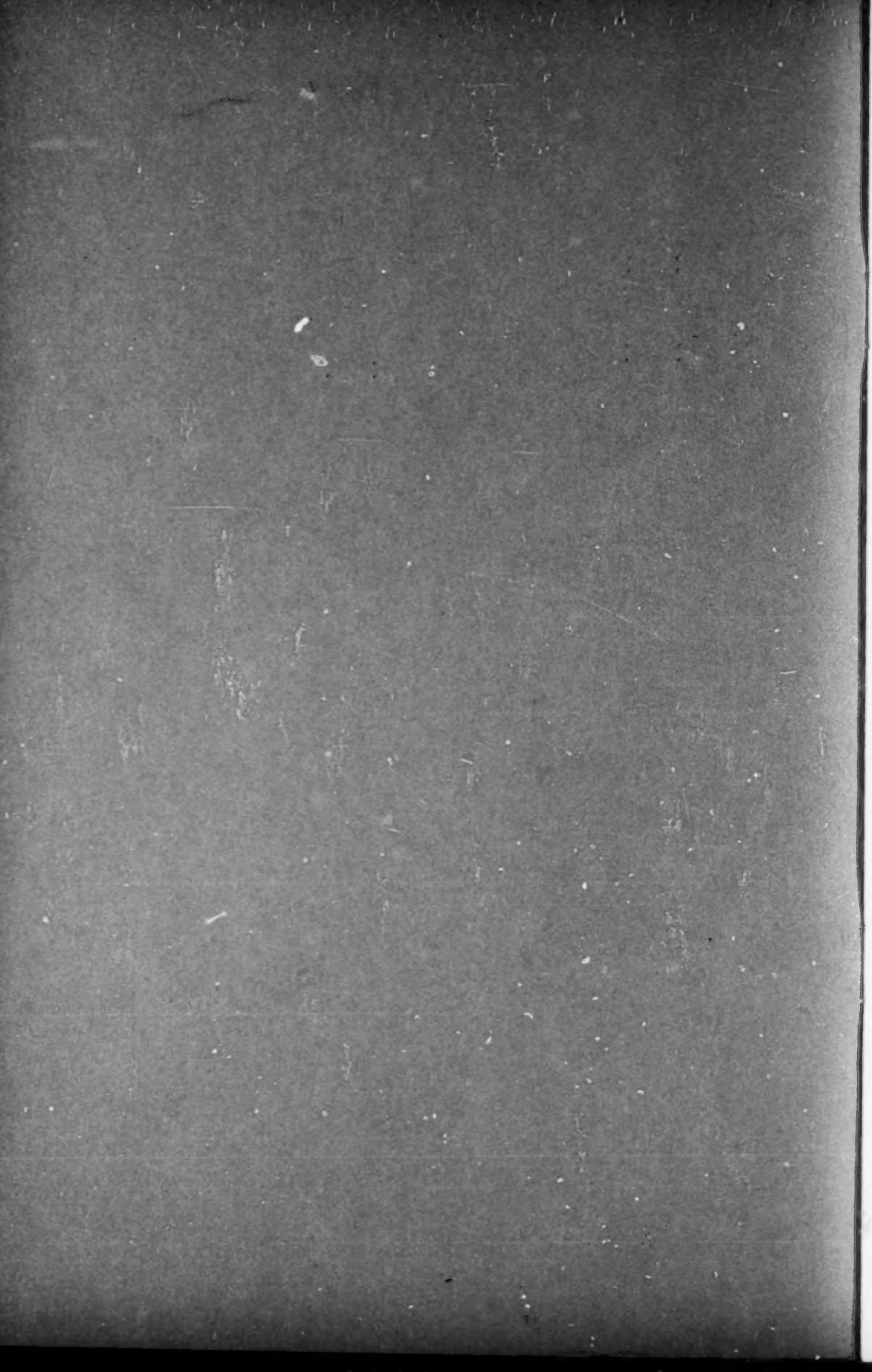
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In The  
Supreme Court of the United States  
October Term, 1989

---

RANDALL HANK WILLIAMS,  
*Petitioner,*  
vs.

CATHERINE YVONNE STONE,  
*Respondent.*

---

On Petition For Writ Of Certiorari  
To The Supreme Court Of Alabama

---

REPLY BRIEF

---

REASONS FOR GRANTING THE WRIT

In her Brief in Opposition, Respondent attempts to minimize the far-reaching implications of the decision below, ignoring the concerns expressed by the American Council on Education in its *amicus curiae* brief. Respondent has also raised two arguments for the first time, that the Estate of Hiram "Hank" Williams was not closed at the time of the Alabama Supreme Court decision, and that Petitioner had an affirmative duty to intervene in an appeal of an action to which he was not a party and in which the Alabama Supreme Court had no jurisdiction

over him or the property which was taken from him. Each of these arguments is patently unsupported by the facts or the precedent cited by Respondent. Petitioner submits this Reply Brief pursuant to Supreme Court Rule 15.6 to address these arguments.

## I. The Retroactivity Issues

Respondent does not dispute that this case involves the retroactive application of equal protection cases concerning inheritance rights of out-of-wedlock children through intestacy.<sup>1</sup> Instead, she contends that this case is controlled by *Reed v. Campbell*, 476 U.S. 852 (1986), whereas Petitioner believes that this case addresses the retroactivity issue upon which certiorari was granted but which was left unresolved in *Reed*.<sup>2</sup>

Upon plenary review, this Court concluded that retroactivity was not the appropriate basis for deciding *Reed*. In *Reed*, the state's interest in finality was not implicated since the estate had never been closed and the assets had

---

<sup>1</sup> Nor does Respondent dispute that this case raises the question identified in footnote 8 of *Reed v. Campbell*, 476 U.S. 852, 856 n.8 (1986) – whether subsequently enacted legislation regarding intestate succession can be applied retroactively so as to defeat and divest vested claims of distributees whose distributions have been approved by court order when closing an estate. See Petition at 16-18.

<sup>2</sup> Even if *Reed* controls, the proper precedent for retroactive application is *Lalli v. Lalli*, 439 U.S. 259 (1978), and not *Trimble v. Gordon*, 430 U.S. 762 (1977). The Alabama law at issue here was identical to the New York law upheld in *Lalli*. See Petition at 16.

not been "finally distributed." Therefore, the equal protection principles of *Trimble v. Gordon*, 430 U.S. 762 (1977), were to be given controlling effect. *Reed v. Campbell*, 476 U.S. 852, 856 (1986). In this case, the estate of Hank Williams, Sr. was closed by order of the appropriate Alabama court in 1975 (App. H-14), and the assets of the estate were in fact finally distributed. (App. H-12). For that reason, it is clear that the state interests in the "orderly disposition of decedents' estates," *id.* at 855, and in the finality of the distribution of assets of an estate are implicated in this proceeding.<sup>3</sup> The unsettling effect of the Alabama decision on closed estates is palpable and far-reaching and raises precisely the issue left unresolved in *Reed*.

Respondent contends that this case involves an open estate as did *Reed*. This is transparently erroneous. It is undisputed that the estate was closed in 1975 with appropriate judicial approval (App. at H-14.1), and all assets of the estate were finally distributed just prior to that time. (App. H-12 and H-13). Those are the crucial, undisputed and unalterable facts. Retroactivity issues concerning an estate "reopened" in a collateral proceeding more than ten (10) years after that estate was formally closed hardly invoke the same analysis as an estate that is open, has never been closed, and whose assets remain undistributed. *Reed* expressly left open the application of cases such as *Trimble* and *Lalli v. Lalli*, 439 U.S. 259 (1978), in the circumstances involved in this pending litigation, and

---

<sup>3</sup> This is the case even if the claims are deemed meritorious and even if "mistakes of law or fact may have occurred during the probate process." *Reed*, 476 U.S. at 855.

this case provides an excellent vehicle for deciding that unresolved question – a question that is of great concern to our nation's institutions of higher education and to other charitable institutions.

Respondent's characterization of the Alabama proceedings is a bit fanciful. Respondent argues that there were two unrelated elements to the Alabama Supreme Court's decision. First, the Alabama Supreme Court reopened the estate because "the administrators and attorneys for the estate had committed legal fraud on the court in concealing the existence and identity of an heir." (Opposition Brief at 20-21). Then, since the estate was open, the Alabama Supreme Court could, under *Reed*, apply *Trimble* retroactively to an "open" estate.

Reflection will demonstrate Respondent's fundamental misunderstanding of the decision below. The Alabama courts involved in this matter since 1967 routinely acknowledged that the existence of Respondent was legally irrelevant to her asserted right to share in the estate of Hank Sr. (App. H-6, H-11, I-5). The Alabama law at all relevant times allowed an out-of-wedlock child to inherit by intestacy from her father only under certain circumstances. The Alabama court in 1967 expressly held that the statutory requirements, which would have allowed Respondent to inherit from Hank Sr., were not met so as "to give the child in question any right of inheritance from [Hank Sr.] or to receive any part of his estate." (App. at H-6.2).

Under those circumstances, the biological status of Respondent was legally irrelevant under controlling Alabama law. The Alabama court made that express finding

in 1967. (App. at H-6.2). Even so, Respondent's existence was brought to the attention of the Alabama trial court in 1967 by the administratrix of Hank Sr.'s estate (App. at H-4.1 and I-3.2), by her guardian ad litem (App. at H-5.3 to H-5.5, H-8.1), and again by the then-administrator in 1975. (App. at H-10.1 and H-11.1).

Nevertheless, the Alabama Supreme Court found that the failure to disclose Respondent's existence before 1967 and the failure to advise the trial court in 1967 of hearsay evidence with respect to Respondent's possible parentage constituted a fraud upon that court. However, there could be no fraud unless such non-disclosure is combined with a view that the pre-existing statutory scheme concerning intestate succession was constitutionally infirm.<sup>4</sup>

The idea that the finding of fraud is conceptually distinct from the retroactive application of *Trimble v. Gordon* cannot withstand analysis. The central premise of the decision below was that *Trimble* should be applied retroactively to an estate that had been closed by final order for ten years before commencement of the action. See

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<sup>4</sup> Respondent quotes the Alabama Supreme Court's language with respect to applying a "constitutional law as it exists at the time that appeal is heard." (Opposition Brief at 18-19). What Respondent does not quote is the immediately previous portion of the opinion, which makes it clear that the Alabama Supreme Court felt that the pre-existing Alabama law of intestate succession had been found unconstitutional under *Trimble v. Gordon*. The reason, therefore, not to apply the pre-existing law of intestate succession was that it was unconstitutional, a clear indication of the retroactive application of *Trimble* in a collateral proceeding that challenges the validity of the disposition of the estate.



Petition at 11-12 and *supra* n.4. It was this retroactive application of *Trimble* which formed the basis for the creation of a legal duty of disclosure.<sup>5</sup> After retroactively establishing this duty, the Alabama Supreme Court declared it to have been breached and that such breach constituted fraud. It then used such alleged fraud to justify the reopening of a closed estate and a redistribution of its assets. The retroactive application of "new" rules to a closed estate is precisely the question left open by *Reed* and which Petitioner urges this Court to decide.

## II. Due Process Issues

What is most significant about Respondent's Brief in Opposition with regard to the due process issues is her agreement with Petitioner's position on the pivotal issues. First, she acknowledges forthrightly that she only appealed the third party action and did not appeal either Petitioner's complaint against her or her counterclaim against him. Second, she acknowledges that Petitioner never was a party to the third party action, which was the only matter appealed to the Alabama Supreme Court. The matter in which Petitioner was a party was resolved favorably to Petitioner and became final when unappealed. Third, there is not a word in defense of the Alabama Supreme Court's *in rem* theory of jurisdiction. Even the Alabama Supreme Court apparently realized

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<sup>5</sup> Under Alabama law there would be no duty to disclose the existence or identity of a person who had no legal claim to an estate. (App. at A-1.28 to A-1.29). Respondent had no legal interest in the estate unless *Trimble* were to be applied retroactively.

that it could not assert personal jurisdiction over Petitioner because he was not before the court (App. at C-1.8), but Respondent does not even purport to defend the *in rem* theory for asserting jurisdiction.

Respondent would require Petitioner to intervene in the appeal of the third party action to protect his rights. This can only be described as ludicrous.<sup>6</sup> Petitioner's rights had been secured by the final unappealed judgments in his favor in the same proceeding. Any relief on the appeal would have to be derived from the third party defendants/appellees. As argued by Respondent in her appeal of the third party action:

" . . . the theory of liability is one of indemnification. . . . While the Original Complaint did not seek damages, there is no doubt that the adverse ruling to [Respondent] did cause her great pecuniary damage; a damage which she rightfully seeks *indemnification* from the third party defendants. The *fact* that [Respondent] did not appeal the judgment on the Original Complaint in no-wise affects her right to seek *indemnification*." [emphasis added]. (App. at G-6.11).

If ever applicable, her ambitious prayer that Hank Sr.'s estate be reopened was rendered a nullity by the

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<sup>6</sup> None of the cases cited by Respondent in support of this contention are applicable. None of the cases involved a requirement to intervene, only the right to intervene and the timeliness of a petition to do so. None of such purported precedent involved intervention in an appeal. Alabama Rule of Civil Procedure 24 cited by Respondent is only applicable to trial proceedings and is not applicable to Respondent's argument that Petitioner "should have" intervened in the third party action appeal.

final unappealed judgments on the original complaint and her counterclaim. By her own admission, Respondent was only seeking indemnification from the third party defendants because she lost in those actions. There is simply no reason to require Petitioner to intervene in such an action when he had won an unappealed judgment, definitely establishing his rights, as against Respondent, as part of the very same proceeding.<sup>7</sup>

Respondent also argues that Petitioner's interests were adequately represented by the actual appellees before the Alabama Supreme Court. (Opposition Brief at 16). This position is contradicted by numerous cases of this Court. See, e.g. *Hansberry v. Lee*, 311 U.S. 32 (1940) (an earlier decision could not be binding upon a person who had not been a party to such earlier litigation). The absurdity of the "surrogate litigators" theory is particularly evidenced by the outcome of this action. Despite the

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<sup>7</sup> This should also put to rest any concern about the timeliness of Petitioner's filings below. Respondent has also argued that Petitioner did not raise his constitutional claims at the earliest possible opportunity in the state court after actual notice of the third party complaint which purported to affect his rights. As a non-party to the third party indemnity action and the appeal of the dismissal thereof, Petitioner had no stake in that action or appeal. Only when the Alabama Supreme Court acted unconstitutionally by adjudicating his rights when it had no jurisdiction to do so and without affording him the constitutionally required notice and an opportunity to be heard did Petitioner have an interest in the third party action appeal. See Petition at 26. At that point, Petitioner sought to be heard before the Alabama Supreme Court but was denied that opportunity. See Petition at 9-11, App. at C-1.13 and G-7.

alleged fraud of the third party defendants, the Alabama Supreme Court exonerated them from liability. (App. at C-1.14). While the alleged fraud on the part of the third party defendants/appellees caused the Alabama Supreme Court to strip Petitioner of a significant portion of his assets, that court upheld summary judgment on behalf of the third party defendants/appellees, who were the only parties before the court and the ones who committed the alleged fraud.

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## CONCLUSION

This case is of tremendous potential significance because it unsettles the law of estates and inheritance. As the Brief *Amicus Curiae* of the American Council on Education makes abundantly clear, not only Petitioner, but institutions of higher education and other charitable entities, feel insecure as a result of the decision below in this case.

The opinion of the Alabama Supreme Court is a procedural and analytical nightmare that could have widespread and untoward consequences. When an estate is closed by judicial decree, distributees and their assignees must be able to rely on the soundness of the title to assets they obtain from the estate. This case provides an excellent vehicle for determining the retroactive application of "new" rules to a closed estate, the precise question left open in *Reed v. Campbell*.

The decision of the Alabama Supreme Court is contrary to prior decisions of this Court and has far-reaching implications in the areas of estate administration and due

process. For the reasons stated herein and in the Petition,  
this Court should set this case for full consideration.

Respectfully submitted,

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MAY 23 1990

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No. 89-1538

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In The  
Supreme Court of the United States  
October Term, 1989

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RANDALL HANK WILLIAMS,  
*Petitioner,*  
vs.

CATHERINE YVONNE STONE,  
*Respondent.*

---

On Petition for Writ of Certiorari  
to the Supreme Court of Alabama

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS  
CURIAE AND BRIEF AMICUS CURIAE OF  
AMERICAN COUNCIL ON EDUCATION  
IN SUPPORT OF PETITIONER

---

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MOTION OF AMERICAN COUNCIL ON EDUCATION  
FOR LEAVE TO FILE BRIEF AMICUS CURIAE  
IN SUPPORT OF PETITIONER

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The American Council on Education ("ACE") hereby respectfully moves the Court for leave to file the attached Brief Amicus Curiae in Support of Petitioner in this cause. Respondent Catherine Yvonne Stone has refused consent to the filing of a Brief Amicus Curiae by the ACE. The ACE submits this motion and brief to bring relevant information to the attention of the Court with respect to



the effect of the decision of the Supreme Court of Alabama upon educational and charitable institutions.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF AMERICAN COUNCIL  
ON EDUCATION IN SUPPORT OF PETITIONER

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## QUESTIONS PRESENTED

- I. WHETHER A "NEW" RULE OF LAW THAT BENEFITS A PREVIOUSLY DISAPPOINTED CLAIMANT TO AN ESTATE IS TO BE APPLIED RETROACTIVELY IN A COLLATERAL ATTACK UPON A CLOSED ESTATE.
- II. WHETHER, ABSENT PERSONAL JURISDICTION, ASSERTION OF *IN REM* JURISDICTION OVER PROPERTY SITUATED OUTSIDE OF THE FORUM STATE VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.
- III. WHETHER THE FAILURE TO PROVIDE PARTIES, WHOSE RIGHTS TO PROPERTY FROM AN ESTATE HAVE VESTED BY VIRTUE OF A DECREE ISSUED BY A COURT OF COMPETENT JURISDICTION, WITH NOTICE OF AND AN OPPORTUNITY TO BE HEARD IN A PROCEEDING THAT MIGHT ADVERSELY AFFECT THOSE PROPERTY INTERESTS VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

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BRIEF AMICUS CURIAE OF AMERICAN COUNCIL  
ON EDUCATION IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS CURIAE

The American Council on Education ("ACE"), an independent, nonprofit association founded in 1918, represents approximately 1,500 accredited, degree-granting institutions of higher education as well as national and regional higher education associations. Through its programs and activities, and its policy-setting functions, it strives to ensure quality education on the nation's campuses and equal educational opportunity for all Americans.



Testamentary bequests and contributions of property and income derived from decedents' estates constitute a major source of funding for educational and charitable institutions.<sup>1</sup> With governmental support for such institutions on the wane, such philanthropic gifts acquire even greater significance. The American Association of Fund-Raising Counsel Trust for Philanthropy estimates that \$6,790,000,000 was given to educational and charitable organizations by means of testamentary bequests in 1988.<sup>2</sup> Other untold billions of the \$86,700,000,000 contributed by individuals and the \$4,750,000,000 contributed by foundations in 1988 were derived from assets distributed from and traceable to decedents' estates.<sup>3</sup> Approximately \$8,350,000,000 in total philanthropic gifts went to institutions of higher learning in 1988 alone.<sup>4</sup>

Since testamentary bequests and contributions of property and income derived from decedents' estates form a significant portion of the funding for ACE member institutions, any challenge to the finality of testamentary distribution orders or attacks upon the ownership of assets distributed from estates are a major concern of the ACE and its member institutions. The recent decision of the Supreme Court of Alabama in the case of *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co.*, 554 So. 2d

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<sup>1</sup> Vanderbilt University alone received over \$12,000,000 from testamentary bequests between 1986-1989. Board of Trustees of Vanderbilt University, *Report on Private Giving* (1989).

<sup>2</sup> *Fund Raising Management*, September 1989, p. 19.

<sup>3</sup> *Id.*

<sup>4</sup> G. Fuchsberg, *The Chronicle of Higher Education*, June 14, 1989, p. A31.

396 (Ala. 1989), seriously jeopardizes the title to assets and the income derived therefrom which are distributed from and through decedents' estates and contributed to educational and charitable institutions and dangerously impedes the right of such institutions to protect such property and income. The ACE therefore urges this Court to grant the instant Petition for Writ of Certiorari to review such decision.

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### SUMMARY OF THE ARGUMENT

The decision of the Supreme Court of Alabama in the case of *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co.*, 554 So. 2d 396 (Ala. 1989), calls into question the finality of distributions from decedents' estates and the ability of distributees and their transferees to defend title to assets derived from such estates. The decision violates the due process rights of the Petitioner and sanctions the possible violation of the due process rights of the holders of former estate assets and the income derived therefrom.

The retroactive application of "new" rules to closed estates violates the due process rights of those persons who are determined by a court of competent jurisdiction to be entitled to receive the assets of the estate. Such application may deprive not only the distributee but his or her transferee of property without due process of law. Assertion by the Alabama Supreme Court of *in rem* jurisdiction over the distributed assets of an estate, without personal jurisdiction over the holder of such assets, is violative of the due process rights of the owner of such assets. Such due process rights are further violated by the Alabama Supreme Court's failure to give Petitioner notice

that his rights would be adjudicated in the appeal before it and, after taking such action, denying him an opportunity to be heard.

The decision of the Alabama Supreme Court unsettles the law of estate administration and approves the violation of the elementary due process rights of all persons interested in assets derived from a decedent's estate. Such decision is, therefore, of major importance to all recipients of estate assets and should be reviewed by this Court.

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#### REASONS FOR GRANTING THE PETITION

- I. **THE DECISION OF THE ALABAMA SUPREME COURT IS OF NATIONAL CONCERN TO EDUCATIONAL INSTITUTIONS AND OTHER CHARITABLE INSTITUTIONS BECAUSE OF ITS ASSAULT ON THE FINALITY OF ORDERS IN DECEDENTS' ESTATES.**

To engage in sound educational and financial planning, charitable institutions, which depend heavily on contributions to fund their operations, must be able to rely on the validity of the gifts that they receive. A major source of gifts for universities and other charitable organizations derives from decedents' estates. In order to realize the benefits of testamentary bequests, educational and charitable organizations must be able to rely upon the integrity of gifts they obtain. They must be able to determine what rights they secure from a bequest in order to make rational plans and to make long-term financial commitments. And, in order to ascertain what rights they have in property transferred to them, charities

must have the ability to determine what rights a transferor has in the property granted to the charity.

Rights to property from an estate are definitively established by the final orders of courts of competent jurisdiction when those court decrees close and distribute the assets of an estate. When non-profit institutions receive a testamentary bequest or a contribution indirectly derived from income or assets from an estate, those institutions may legitimately plan programs and make expenditures in justifiable reliance on the validity of the title being transferred. If a court of competent jurisdiction has finally determined the rights of the parties in an estate proceeding, and title to property from the estate has been transferred to a university (either directly as a distributee of the estate or indirectly from a distributee of the estate), the divestiture of a university's assets as a result of a collateral proceeding that calls into question the propriety of the original distribution of the estate is very disruptive to the financial well-being of a university or any charity. Indeed, a cornerstone of a charity's ability to realize the benefits from a donation that derives from an estate is that institution's ability to rely on the validity and integrity of the underlying title to the property transferred. Absent that form of security and absent an ability to rely on the conclusiveness of court orders that close an estate and distribute its assets, a university would make financial commitments with great reluctance and at great risk.

The important state interests in the orderly disposition of decedents' estates and in the finality of the distribution of assets of closed estates were recognized by this Court in *Reed v. Campbell*, 476 U.S. 852, 855 (1986). These

interests are equally applicable to beneficiaries of testamentary bequests and related donations. Just as this Court has recognized that public policy demands an end to litigation, *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981), there must be a point at which distributions from decedents' estates may no longer be challenged on the ground that the law has changed in a way favorable to one of the disappointed claimants to an estate. Cf. *Evans v. Abney*, 396 U.S. 435 (1970) (declining to require alteration of racially discriminatory terms of a will through application of cy pres doctrine).

Educational and charitable institutions develop both long range and short term financial strategies, and make financial, program, personnel and building commitments based upon the certainty of title to identifiable property which is received through testamentary bequests or related donations. In certain situations, such as in this case where the copyrights in dispute can be expected to bring in revenues for years to come, title to property ensures a stream of income which can form the basis for long-term programmatic and financial commitments for charitable institutions. Because it undermines the fiscal foundation upon which such plans are built, the decision of the Alabama Supreme Court places in jeopardy development plans that rely on donations. That, in turn, could cause fiscal hemorrhages for the institutions that conceived those plans and made commitments to implement them. If such a decision should stand, educational and charitable institutions will no longer be able to anticipate income from donated property derived from closed estates in endowing chairs, establishing scholarships or contracting for capital improvements. Such projects would be

undertaken only if back-up funding sources were available. That would hamper the ability of such institutions to fulfill their educational or charitable missions and significantly impair their ability to respond to new opportunities or to cope with pressing needs. Scholars of nonprofit enterprise point to lack of access to capital markets and slow response to changed needs and circumstances as some of the major drawbacks of the nonprofit form of organization. See Hansmann, *Reforming Nonprofit Corporation Law*, 129 U. PA. L. REV. 497, 501-11 (1981). The Alabama Supreme Court's decision would exacerbate that tendency or weakness in nonprofit institutions, to the detriment of those who depend on the important work done by those nonprofit organizations.

By permitting a collateral attack to reopen an estate closed for more than ten (10) years and by retroactively applying "new" rules to the administration of such estate so as to change the already-vested interests of the beneficiaries, the Alabama Supreme Court casts doubt upon the title to specific property derived from such estate and donated to an educational or charitable institution. That would affect the sanctity of a university's title to property whether donated directly by the testator or by a beneficiary who received such property from the estate. Thus, the implications for a university would be the same whether Hank Williams, Sr. had bequeathed funds to a university to endow a chair in country music or whether Hank Williams, Jr. had given a portion of his inheritance to a university to endow a chair in country music named for his father. In either case, the university would be in a difficult position, even after Hank Sr.'s estate was closed



by court decree. Should the university hire a distinguished scholar in the field of country music and commit the funds to pay a salary for the life of the chairholder, knowing that those funds could be at risk if a disappointed claimant to the estate subsequently asserted a newly created right and thereby sought to reopen the estate and undo the previous distribution? Or should the university refuse to make such a commitment and deprive its students of the opportunity to have the benefit of exposure to a nationally recognized scholar in country music? Such fiscal conservatism, while prudent under the Alabama decision in this case, would be contrary to the interests of all involved in university life.

Unbridled retroactive application of "new" rules to closed estates would permit potential claimants to set aside testamentary bequests and deprive beneficiaries of their title to identifiable property upon any change in the law. Even the unique remedy fashioned by the Alabama Supreme Court would not alleviate the problem. If the donation consisted of income-producing property or the right to receive income from income-producing property such as copyright royalties, any diminution in the interest of the donor would correspondingly reduce the value of the donation to the institutional beneficiaries.

This Court has previously recognized the importance of the question of retroactive application of "new" rules to closed estates by granting certiorari in *Reed v. Campbell*, 476 U.S. 852 (1986). Because that case involved an open estate, however, the issue was left open. The instant case provides an excellent vehicle for the Court to establish the rational line that "new" rules will not be retroactively applied to estates which have been closed by appropriate

orders of courts of competent jurisdiction so as to alter the distribution of the assets of the estate.

This Court has recently undertaken to rationalize the law of retroactivity in the area of criminal constitutional law by drawing a bright line between cases on direct review and matters raised on collateral attack. *Compare Teague v. Lane*, 109 S. Ct. 1060, *reh'g denied*, 109 S. Ct. 1771 (1989) with *Griffith v. Kentucky*, 479 U.S. 314 (1987). This bright-line principle has also been recognized in the civil area. See *Bradley v. School Board*, 416 U.S. 696, 710-11 (1974) (recognizing the distinction in civil retroactivity between a "change in the law that takes place while a case is on direct review . . . and its effect on a final judgment under collateral attack. . ."). Clearly, the general issue of civil retroactivity is important, and, given *Reed v. Campbell*, the specific issue of retroactivity in the context of a closed estate warrants review. This case provides an excellent vehicle for this Court to address these issues and thereby alleviate a significant risk for the financial well-being of universities and other nonprofit institutions that rely so heavily on estate-derived donations.

## II. THE ALABAMA SUPREME COURT'S ASSERTION OF *IN REM* JURISDICTION OVER THE DISTRIBUTED ASSETS OF A CLOSED ESTATE CONFLICTS WITH DECISIONS OF THIS COURT AND HAS NATIONAL SIGNIFICANCE FOR EDUCATIONAL AND CHARITABLE BENEFICIARIES OF SUCH ASSETS.

Without personal jurisdiction over the distributee, the Alabama Supreme Court has asserted *in rem* jurisdiction over assets of a closed estate which had been



distributed to a non-Alabama resident. As noted by the Petitioner (Petition at 20), this Court has consistently held that there is no unitary concept to an estate and that a state court's jurisdiction does not extend to and embrace individual estate assets not situated within the territorial jurisdiction of the state. *Overby v. Gordon*, 177 U.S. 214, 222 (1900). *Accord Riley v. New York Trust Co.*, 315 U.S. 343, 353 (1942) (denying "extraterritorial effect upon assets in other states" to an *in rem* judgment). In an intestacy proceeding, this Court has held that the *in rem* effect of a state court judgment is limited to assets within the forum state. *Baker v. Baker, Eccles & Co.*, 242 U.S. 394 (1917). Likewise in *Hanson v. Denckla*, 357 U.S. 235, 250 (1958), this Court declared that a state court has no authority to "enter a judgment purporting to extinguish the interest of [a person over whom it has no jurisdiction] in property over which the Court has no jurisdiction." Yet that is precisely what the Alabama Supreme Court purported to do.

The ramifications of such conduct are not limited to whether or not the Petitioner in this case is to be deprived of his property by the Alabama Supreme Court without proper jurisdiction. Under the Alabama rule, the beneficiary of any bequest or donation of property derived from an estate of an Alabama decedent may be forced, without personal jurisdiction, to defend its interest in such property in Alabama or risk losing it. The sweep of this analysis would remain applicable whether the property is a direct bequest from an estate or is donated by a beneficiary of the estate or even by an unrelated third party who may or may not have any connection with the state

of Alabama, so long as the property had its beginnings in an Alabama estate.

Such conduct clearly violates due process under *Hanson v. Denckla*; *Riley v. New York Trust Co.*; *Baker v. Baker, Eccles & Co.*; and *Overby v. Gordon*. Further, it is an end-run around *Shaffer v. Heitner*, 433 U.S. 186, 206 (1977), which held that due process rights "cannot depend on the classification of an action as *in rem* or *in personam*," and will undermine and promote disregard for *Shaffer's* core principles. Finally, it is extremely burdensome to the educational and charitable institution donee/beneficiary, and, coupled with the lack of notice provided by the Alabama Supreme Court, places all such bequests and gifts in jeopardy.

### III. THE DECISION OF THE ALABAMA SUPREME COURT DOES NOT PROVIDE EDUCATIONAL AND CHARITABLE INSTITUTIONS, WHOSE RIGHTS IN PROPERTY MAY BE ADVERSELY DETERMINED, WITH AN OPPORTUNITY TO PROTECT THOSE RIGHTS IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

Just as the Alabama Supreme Court deprived Petitioner of a portion of the income derived from the assets of his father's long-closed estate without providing him with notice and an opportunity to be heard, educational and charitable institutions could be deprived of specific identifiable property distributed from an estate and the income stream derived therefrom without an opportunity to protect such property and income. If unchallenged, the actions of the Alabama Supreme Court go beyond depriving Petitioner of income derived from the distributed

assets of his father's estate. They place a cloud over the billions of dollars in annual direct bequests from estates to educational and charitable institutions and the untold billions of dollars in income and property which are derived from assets distributed from decedents' estates and donated by individuals or foundations.

Since 1950, when this Court decided *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), this Court has recognized that prior to taking action that will determinatively affect an interest in property protected by the Due Process Clause of the Fourteenth Amendment, a state must provide notice to interested parties of the pendency of such action and afford them an opportunity to present their objections. Such principle applies whether the action is *in rem* or *in personam*. See *Shaffer v. Heitner*, 433 U.S. 186, 206 (1977). This "elementary and fundamental requirement of due process" has recently been applied to the opportunity of a mortgagee to defend against tax sales, *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), and to the opportunity of a creditor to present claims against a decedent's estate, *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988).<sup>5</sup> Surely such due process requirements extend to the owner of assets distributed from an estate pursuant to orders of a court of competent jurisdiction.

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<sup>5</sup> A challenge to the decision of the Wyoming Supreme Court not to require that notice of a sale of trust assets be given to the remainder beneficiary of a trust, *Estate of Jones*, 782 P.2d 229 (Wyo. 1989), is currently before this Court on Petition for Writ of Certiorari. *Shriners' Hospitals for Crippled Children v. First Security Bank*, No. 89-1444.

Despite this Court's decisions, the Alabama Supreme Court assumes the power to reopen a closed estate and, for whatever reason, reallocate the distribution of prior estate assets without providing the lawful owner of such assets with notice that his rights were being determined and without providing him an opportunity to be heard. Without inquiry regarding the possible further distribution of such assets or the income derived therefrom – and therefore in disregard of any rights that such transferees would have as a result of the further distribution –, the Alabama Supreme Court stripped the Petitioner of one-half of the income derived from assets of his father's estate. At a minimum, Petitioner was entitled to notice and an opportunity to be heard.

It takes little imagination to realize the immense ramifications of the actions of the Alabama Supreme Court if they are left unchallenged. If Petitioner or any distributee of estate assets had donated such assets or the income derived therefrom to an educational or charitable institution, the income which such institution had relied upon could be removed or drastically reduced without any interested party having the opportunity to object to such action or otherwise be heard. The very real threat to a significant portion of their funding severely diminishes the ability of such institutions to plan for the utilization of such funds in either the short or long term without sufficiently secure reserve funding.

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## CONCLUSION

The decision of the Supreme Court of Alabama goes far beyond determining the ownership interest in the income derived from specific assets of an estate. It threatens the orderly administration of decedents' estates and the finality of any distribution of assets of a testamentary estate even after an estate has been closed by court order. If not overturned, the decision of the Supreme Court of Alabama could serve as precedent to question the validity, integrity, and finality of billions of dollars of bequests and contributions to educational and charitable institutions of income and property derived from decedents' estates. For the reasons stated herein, the Court is urged to grant certiorari.

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